UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1993/11
9 February 1993

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda item 3

ORGANIZATION OF THE WORK OF THE SESSION

Report of the Independent Expert on El Salvador, Mr. Pedro Nikken, appointed by the Secretary-General in accordance with Commission on Human Rights resolution 1992/62 of 3 March 1992

CONTENTS

		Paragraphs	Page
	INTRODUCTION	1 - 22	4
I.	OVERALL POLITICAL SITUATION	23 - 41	8
II.	CONSIDERATION OF THE HUMAN RIGHTS SITUATION	42 - 112	13
	A. Right to life	43 - 69	13
	1. Extrajudicial, summary or arbitrary executions	43 - 58	13
	2. Attacks	59 - 63	16
	3. Death threats	64 - 69	16
	B. Enforced or involuntary disappearances	70 - 73	17
	C. Right to freedom from torture and other cruel, inhuman or degrading treatment or punishment . .	74 - 80	18

CONTENTS (continued)

		Paragraphs	Page
D.	Right to liberty	81 - 89	19
	1. Arbitrary or unlawful detention	82 - 86	19
	2. Forcible recruitment	87 - 88	20
	3. Freedom of movement	89	21
E.	Right to due process of law	90 - 101	21
	1. Pre-trial detention	93 - 94	21
	2. Incommunicado detention	95	22
	3. Right to legal counsel	96 - 97	22
	4. Judicial investigation of crimes	98 - 99	23
	5. Delay in the administration of justice	100 - 101	23
F.	Freedom of expression and the press	102 - 104	24
G.	Economic, social and cultural rights	105 - 109	25
H.	International humanitarian law	110 - 112	26
III.	IMPACT OF THE IMPLEMENTATION OF THE PEACE AGREEMENTS ON THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS	113 - 220	26
A.	Agreements on permanent machinery for the protection of human rights	121 - 174	28
	1. The National Counsel for the Defence of Human Rights	122 - 131	28
	2. National Civil Police	132 - 146	31
	3. Judicial system	147 - 174	34
B.	Special measures to ensure the observance and safeguarding of human rights	175 - 187	40
	1. United Nations Human Rights Verification Mission	176 - 180	40
	2. Commission on the Truth	181 - 187	41
C.	Agreements on the armed forces	188 - 199	43

CONTENTS (continued)

		Paragraphs	Page
D.	Other human rights agreements	200 - 220	46
	1. Political rights	201 - 204	46
	2. Economic, social and cultural rights	205 - 220	46
IV.	IMPLEMENTATION OF EARLIER RECOMMENDATIONS	221 - 251	50
A.	Recommendations contained in the final report of the Special Representative	222 - 223	50
B.	Recommendations made by the United Nations Observer Mission in El Salvador	224 - 241	51
C.	Recommendations made by the commissions established in the negotiation process	242 - 251	55
	1. National Commission for the Consolidation of Peace	242 - 243	55
	2. Ad Hoc Commission	244 - 250	55
	3. Other commissions	251	57
V.	CONCLUSIONS	252 - 268	58
A.	Human rights situation in El Salvador	253 - 258	58
B.	Effects of implementation of the Peace Agreements on effective enjoyment of human rights	259 - 266	59
C.	Implementation of previous recommendations	267 - 268	61
VI.	RECOMMENDATIONS	269 - 281	61

INTRODUCTION

1. The human rights situation in El Salvador has been considered by the Commission on Human Rights since its thirty-seventh session, in 1981. On that occasion the Commission adopted resolution 32 (XXXVII) of 11 March 1981, in which it requested its Chairman to appoint, after consultations within the Bureau, a Special Representative of the Commission whose mandate would be to investigate the reports about murders, abductions, disappearances, terrorist acts and all grave violations of human rights and fundamental freedoms which have taken place in El Salvador, based on information from all relevant sources, and to make recommendations as to what steps the Commission could take to help to secure the enjoyment of human rights and fundamental freedoms, including economic, social and cultural rights. The Chairman of the Commission on Human Rights at the time, after consulting with members of the Bureau, appointed as Special Representative of the Commission Mr. José Antonio Pastor Ridruejo, who submitted an annual report to the Commission from its thirty-eighth session in 1982 until its forty-eighth session in 1992, in addition to the reports he also submitted annually to the General Assembly.

2. In his final report to the Commission on Human Rights, (E/CN.4/1992/32), the Special Representative said that, despite the fact that in 1991 there had been a decrease in the number of human rights violations as compared with 1990, he considered it necessary once again to appeal most emphatically to the Government and all the country's political authorities, institutions and forces, including the guerrilla organizations, to take all necessary steps to bring to an immediate and complete end attempts on human life, physical integrity and dignity. The Special Representative also called on the constitutional authorities of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) scrupulously to implement the agreements reached in order to ensure that the complete and lasting reconciliation of all sectors of Salvadorian society is achieved as soon as possible and recommended to both parties that they should try to inculcate in the most radicalized sectors of society a civic culture of peace and harmony which will ensure the full implementation of the agreements concluded (E/CN.4/1992/32, paras. 140-141).

3. The Special Representative specifically recommended to the constitutional authorities of the Republic of El Salvador "the adoption of measures to prevent any kind of threats and psychological intimidation against certain sectors of the population; perseverance with the judicial reform effort and the establishment of an efficient criminal investigation body under the Judiciary; and perseverance in carrying out the agrarian reform programme and other structural reforms needed to improve the population's well-being". Lastly, the Special Representative recommended to all States of the international community, in particular the richest and most developed States, that they "increase the assistance necessary to alleviate and improve the situation of Salvadorian citizens who have been displaced, made refugees or resettled as a result of the armed conflict" (E/CN.4/1992/32, paras. 142-143).

4. The report of the Special Representative was considered by the Commission on Human Rights at its forty-eighth session. On 3 March 1992 the Commission adopted, without a vote, resolution 1992/62, in which, inter alia, it extended

its thanks to the Special Representative for his report and requested the Secretary-General to appoint an independent expert to discharge a new mandate, namely, to provide assistance in human rights matters to the Government of El Salvador, consider the human rights situation in the country and the effects of the Peace Agreements on the effective enjoyment of human rights and investigate the manner in which both parties apply the recommendations contained in the final report of the Special Representative and those made by the United Nations Observer Mission in El Salvador and the commissions established during the negotiating process. In paragraph 12 of that resolution, it requested the Independent Expert to report on the outcome of his inquiries to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session.

5. The Economic and Social Council, in decision 1992/237 of 20 July 1992, approved the mandate established by the Commission on Human Rights.

6. Pursuant to the request in paragraph 11 of Commission on Human Rights resolution 1992/62, the Secretary-General appointed Mr. Pedro Nikken as Independent Expert to discharge the mandate contained in that resolution.

7. Since 16 September 1991, the General Assembly has also examined five reports submitted by the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL), established in accordance with Security Council resolution 693 (1991) of 20 May 1991. The specific mandate of the Human Rights Division of ONUSAL is to verify compliance with the Agreement on Human Rights signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) at San José, Costa Rica, on 26 July 1990 (A/44/971-S/21541, annex). The first report of the Director of the Human Rights Division (A/45/1055-S/23037, annex) was prepared during the preparatory phase of the Mission and laid the basis for the subsequent reports, establishing the legal and political framework for verification based on an analysis of the San José Agreement.

8. The second report of the Director of the ONUSAL Human Rights Division (A/46/658-S/23222 and Corr.1, annex) presents a more precise analysis of the situation, based on the study of cases related to human rights and of situations which deserved special consideration and justified some preliminary recommendations. The informal cease-fire, effective as of 16 January 1992, enabled the Human Rights Division to operate under the conditions originally envisaged by the San José Agreement for the performance of its mandate and to confirm in its third report (A/46/876-S/23580, annex) the recommendations made in its previous report, as well as to make further recommendations.

9. The fourth report of the Director of the ONUSAL Human Rights Division (A/46/935-S/24066, annex) covers the period from 1 January to 30 April 1992, and reflects the major change in the activities of the Division brought about by the signing of the Peace Agreement on 16 January 1992 (A/46/864-S/23501, annex) and the actual cessation of hostilities. The Division reiterated the recommendations contained in its second and third reports and made new recommendations to the parties, based on the cases and situations which it reviewed.

10. The fifth report of the Director of the ONUSAL Human Rights Division (A/46/955-S/24375, annex) covers the period between 1 May and 30 June 1992 and also contains new recommendations.

11. The Chief of the United Nations Observer Mission in El Salvador also submitted a report to the General Assembly and to the Security Council (A/45/1055-S/23037, annex) concerning the establishment, mandate and installation of ONUSAL. In a second report he described the circumstances in which the Mission had begun to operate as a result of its having been established prior to the cessation of the armed conflict, contrary to what was envisaged in the San José Agreement.

12. The Secretary-General informed the Security Council about the activities of ONUSAL since the entry into force of the cease-fire agreement on 1 February 1992 (S/23999). His report referred, inter alia, to the verification of the cessation of the armed conflict, the composition and tasks of the Military Division of ONUSAL, the constitutional reforms affecting the armed forces, the process of reintegration of FMLN combatants, the establishment of the National Civil Police, the process of the reform of the judicial and electoral systems, the restoration of public administration in conflict zones, and economic and social matters such as the land redistribution process, the national reconstruction plan and the Forum for Economic and Social Consultation.

13. By a letter dated 19 October 1992 addressed to the President of the Security Council (S/24688), the Secretary-General reported that substantial progress had been made in the implementation of the Peace Agreements, although there had been some delays in the agreed timetable. The Secretary-General stated that both the Government of El Salvador and the FMLN had accepted his proposal concerning the land problem and had undertaken to work together to implement it as rapidly as possible. He said that he had made every effort to solve the land problem as a matter of priority because he considered it to be the greatest obstacle to the implementation of the Peace Agreements within the established time-limits. He also referred to the delays that had occurred in the deployment of the first units of the new National Civil Police and to the concerns expressed about the allegations that had been received that large quantities of weapons in the possession of FMLN were not included in the inventories submitted to ONUSAL at the beginning of the cease-fire period.

14. By letters dated 29 October and 11 November 1992 (S/24731 and S/24805), the Secretary-General informed the President of the Security Council of certain obstacles to the implementation of the peace process in El Salvador and how they had been overcome. In his letter of 11 November 1992, the Secretary-General reported on the arrangements agreed on with the Government and FMLN officially to end the armed conflict on 15 December 1992. These arrangements included the agreement of the President of the Republic to complete the implementation of the recommendations of the Ad Hoc Commission appointed under the agreement on the purging of the armed forces within a specific time-frame.

15. On 25 November 1992, the Secretary-General submitted a report to the Security Council on the activities of the United Nations Observer Mission in El Salvador during the period July-November 1992 (S/24833).

16. On 9 January 1993, the Secretary-General addressed a letter to the President of the Security Council informing him of the latest developments with regard to compliance with the provisions of the Peace Agreement for El Salvador relating to the purging of the armed forces (S/25078; see also para. 246 below).

17. By a communication of 10 July 1992, the Independent Expert initiated his contacts with the Government of El Salvador, informing it that he intended to visit the country in pursuance of his mandate and proposing the dates 27 September to 4 October 1992. By a letter dated 21 July 1992, the Permanent Representative of El Salvador to the United Nations Office at Geneva informed the Independent Expert that the Government had agreed to the proposed dates.

18. The Independent Expert made his first visit according to the scheduled timetable. He had talks with the President of the Republic; with the Presidents of the Legislative Assembly, the Supreme Court of Justice and the Supreme Electoral Tribunal; with Ministers and other senior officials competent in areas related to his mandate; and with the National Commission for the Consolidation of Peace (COPAZ). He also met the Archbishop of San Salvador; the Father Provincial of the Society of Jesus and other authorities of the José Simeón Cañas Central American University; and representatives of over 30 non-governmental organizations. He had informal contacts with political leaders and, in particular, as provided for in his mandate, held formal talks with FMLN. He received information and support from the United Nations Observer Mission in El Salvador and from the office of the country representative of the United Nations Development Programme. In addition to the city of San Salvador, the Independent Expert went to El Mozote and Perquín, where he had discussions with community leaders and visited a location in which FMLN combatants were concentrated.

19. At its forty-seventh session, the General Assembly considered the first report on the situation of human rights in El Salvador prepared by the Independent Expert (A/47/596) and adopted resolution 47/140 of 18 December 1992. In that resolution, which was adopted by consensus, the General Assembly decided, inter alia, to thank the Independent Expert for his report and the members of the Ad Hoc Commission, the Commission on the Truth and the United Nations Observer Mission in El Salvador for their work in promoting human rights and the consolidation of peace in El Salvador. The General Assembly endorsed all the recommendations made by the Independent Expert in his report, particularly those relating to the strengthening of the Office of the National Counsel for the Defence of Human Rights, the training and development of the National Civil Police in accordance with the model provided for in the Peace Agreements, and the implementation of the agreed reform of the judicial system. It also decided to keep under consideration, during its forty-eighth session, the situation of human rights in El Salvador, in the light of the course of events in the country.

20. By a communication dated 16 November 1992, the Independent Expert requested the Government of El Salvador to authorize him to make a second visit to the country from 7 to 14 January 1993. By a letter dated 10 December 1992, the Permanent Representative of El Salvador to the United Nations Office at Geneva replied that his Government had agreed to the proposed dates for the visit.

21. The second visit to the country took place on the scheduled dates and as planned. During the visit, the Independent Expert had an opportunity to meet again the President of the Republic, the President of the Supreme Court of Justice, the President and members of the Supreme Electoral Tribunal, the Ministers of Defence, the Interior, Justice and the Office of the President, the Vice-Minister for Foreign Affairs and the Director-General of Foreign Policy. He also met the Attorney-General of the Republic, the National Counsel for the Defence of Human Rights, the Director-General of the State Intelligence Agency, the Director-General of the National Civil Police, the Director-General of the National Public Security Academy and the National Commission for the Consolidation of Peace (COPAZ). He again talked to the Archbishop of San Salvador and had meetings with directors and other officials of the Human Rights Institute of José Simeón Cañas Central American University (IDHUCA), with directors of the Archbishop's Legal Aid Office, with directors and members of the Law Enforcement Study Centre (CESPAD) and with the Coordinator for Non-Governmental Organizations. He also held informal meetings with leaders of various political parties, including FMLN. As during his first visit, the Independent Expert received information and support from ONUSAL and the office of the country representative of the United Nations Development Programme.

22. Pursuant to Commission on Human Rights resolution 1992/62 and Economic and Social Council decision 1992/237, the Independent Expert has the honour to submit the present report to the Commission.

I. OVERALL POLITICAL SITUATION

23. The Independent Expert was appointed after the entry into effect of the cessation of the armed conflict, the purpose of which was to bring an end to a conflict that had lasted for over 10 years at enormous cost in terms of lives and property. The restoration of peace was the outcome of negotiations that continued through 1991 and into 1992, under the auspices of the Secretary-General of the United Nations. The Presidents of Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala requested the Secretary-General to use his good offices and the Security Council gave him a mandate to do so in resolution 637 (1989) of 27 July 1989. The Secretary-General agreed to be the intermediary in the negotiations at the request of the President of the Republic of El Salvador and the General Command of the Frente Farabundo Martí para la Liberación Nacional (FMLN). The peace negotiations took place within the framework of the Geneva Agreement, signed in Geneva by the Government of El Salvador and FMLN on 4 April 1990, in the presence of the Secretary-General (press release SG/SM/4426 of 4 April 1990).

24. The Geneva Agreement established the format of and the methodology for the negotiations. The negotiations were to take place either in the form of direct dialogue, in the presence and with the "active participation" of the Secretary-General or his Representative, or by the Secretary-General or his Representative shuttling between the parties. The Agreement also laid down the objectives of the negotiations, which were to (a) end the armed conflict by political means as speedily as possible; (b) promote the democratization of the country; (c) guarantee unrestricted respect for human rights; and (d) reunify Salvadorian society. The Agreement made provision for participation in the process by the political parties and other social

organizations in El Salvador and recognized that it was useful for the Secretary-General to maintain contacts with Salvadorian individuals and groups that could contribute to a successful outcome for the process.

25. The Geneva Agreement established a two-stage process. The "initial objective" was to reach "political agreements that laid the basis for a cessation of the armed conflict and of any acts that infringed the rights of the civilian population", which would be verified by the United Nations. Once that had been achieved, the following stage would focus on the "establishment of the necessary guarantees and conditions for reintegrating the members of FMLN, within a framework of full legality, into the civil, institutional and political life of the country". Accordingly, the Agenda for the Negotiations, adopted in Caracas on 21 May 1990, made provision for two phases, each with an identical list of issues, for the political agreements that the parties planned to reach: armed forces, human rights, judicial system, electoral system, constitutional reform, economic and social issues, and verification by the United Nations. That implied that, once a set of initial agreements had been reached on all the issues, a cease-fire, to be verified by the United Nations, would be negotiated and negotiations would continue on the same subjects with a view to reaching agreements to supplement the earlier ones, in order to bring the armed conflict to an end.

26. From that point onwards, the negotiations were held on an uninterrupted basis through the implementation of the two modalities laid down in the Geneva Agreement. The first political agreement was signed at San José, Costa Rica, on 26 July 1990. Under the San José Agreement, the parties made specific undertakings to ensure the observance and safeguarding of human rights and laid down the terms of reference for the United Nations Human Rights Verification Mission.

27. On 27 April 1991, the parties signed the Mexico Agreements, which comprised constitutional reforms and issues referred to secondary legislation, as well as other political agreements, including an agreement on the establishment of the Commission on the Truth (see paras. 181-187, below). The constitutional reforms covered a number of topics relating to the agreed promotion of the democratization of the country and to progress in the observance of human rights. First of all, the constitutional rules governing the armed forces were amended in order to: achieve a clearer definition of the subordination of the armed forces to civilian society; transfer the powers exercised earlier by the armed forces in the area of public safety to the National Civil Police (NCP), a new body under the control of civilian authorities; and redefine the system of military justice with a view to ensuring that only cases which affect a strictly military legal interest are heard under it. The State Intelligence Agency (OIE) was set up, under the authority of the President of the Republic. Agreements on the judicial system and human rights were also adopted, including an agreement on the organization of the Supreme Court of Justice (see paras. 147 et seq. below) and the creation of the post of National Counsel for the Defence of Human Rights (see paras. 122-131, below). With regard to the electoral system, it was agreed that the Supreme Electoral Tribunal should be established to replace the former Central Board of Elections. Other issues relating to the same subjects were referred to secondary legislation or future political agreements.

28. The Legislative Assembly adopted the agreed constitutional reform within three days of the day on which agreement was reached on it by the parties, and the Assembly ratified it on 31 October 1991 and 30 January 1992. 1/ The Assembly did not ratify the reform all at once, but divided its contents into two parts, respecting its substance. 2/

29. On 25 September 1991, the New York Agreement was signed. It established the National Commission for the Consolidation of Peace (COPAZ), composed of representatives of the parties to the Agreement and of the political parties, as "a mechanism for the monitoring of and the participation of civilian society in the process of the changes resulting from the negotiations". COPAZ was given extensive powers for guaranteeing and overseeing the implementation of the peace agreements. The New York Agreement also covered other items on the Caracas Agenda and contained a major change in the format of the Agenda. The parties agreed to engage subsequently in "compressed negotiations" in the course of which all the aims of the Geneva Agreement had to be attained and, consequently, all the substantive items on the Agenda had to be dealt with before the armed conflict ended.

30. On 31 December 1991 the parties declared by the New York Act that they had reached definitive agreements bringing to an end the negotiations on all substantive items of the Caracas Agenda and the Compressed Negotiations, whose implementation would put a final end to the Salvadorian armed conflict. They also declared that an agreement had been reached on all technical and military aspects relating to the separation of their forces and the cessation of the armed conflict, including the end of the military structure of FMLN and the reintegration of its members, within a framework of full legality, into the civil, political and institutional life of the country. Under the agreement, the cessation of the armed conflict would take effect formally on 1 February 1992, and conclude on 31 October 1992 when the dismantling of the FMLN military apparatus was due to be completed. In the days following the signature of the Act, the parties reached further agreement on the timetable for the implementation of the agreements and modalities for ending the military structure of FMLN. The timetable agreed on set out a detailed schedule for the implementation of each of the agreements reached during the process, covering the period from 1 February to 31 October 1992, with some agreements to be implemented prior to the cease-fire and others during the nine-month cease-fire itself, and yet others to be implemented following the definitive end of the conflict, once the military structure of FMLN has ended.

31. On 16 January 1992 the Peace Agreement was formalized at Chapultepec, Mexico City, when it was signed by the Negotiating Commission of the Government and the FMLN General Command and initialled by President Cristiani. The ceremony took place in the presence of the Presidents of Mexico, Costa Rica, Nicaragua, Honduras, Guatemala, Panama, Venezuela, Colombia and Spain and the Secretary-General of the United Nations. The Agreement is a complex, long text containing nine chapters: I. Armed forces; II. National civil police; III. Judicial system; IV. Electoral system; V. Economic and social questions; VI. Political participation by FMLN; VII. Cessation of the armed conflict; VIII. United Nations verification; and IX. Implementation timetable.

32. In his report to the General Assembly (A/47/596), the Independent Expert pointed out that the cessation of the armed conflict began as scheduled and was an extensively celebrated event in the country that was received with excitement and anticipation by the Salvadorian people. The cease-fire period passed without any military incidents. The Independent Expert is able to report a welcome new development of extraordinary significance: the war has ended and peace is viewed as an irreversibly won right. Although slightly behind schedule, as explained in paragraph 38 below, the reintegration of former FMLN combatants into the civilian, institutional and political life of the country was completed and the armed conflict formally ended on 15 December 1992. The ending of the violence of war has in itself produced a climate more conducive to respect for human dignity.

33. The National Commission for the Consolidation of Peace (COPAZ), which had been operating as a transitional working group under a special regime, was formally established shortly after the cessation of the armed conflict. The Legislative Assembly adopted a National Reconciliation Act on 23 January 1992. The process of legalizing FMLN as a political party was completed on 14 December 1992. Its former General Command and the other leaders of the new party have returned to San Salvador and other places in the country under normal conditions.

34. According to information obtained by the Independent Expert, international assistance to El Salvador has not been forthcoming at the level anticipated and that might have been expected in view of the amount of attention that the armed conflict attracted internationally and the active involvement of the United Nations, with special support from many Governments, in negotiating the peace agreements. This is an awkward situation, since the implementation of some of the agreements calls for an outlay of resources that in the short term can be expected only of international sources of assistance. (See paras. 205 and 220 below).

35. The implementation of most of the agreements has been proceeding, but the requirements with regard to the agreed form and implementation timetable have not been met. It is clear that some agreements have not by any means been implemented within the time-limits originally set. The parties to the agreements had foreseen this possibility and they stipulated that any adjustments to the timetable that might be required, for any reason, "should be decided by ONUSAL in consultation with them". 3/ Consequently, with the support of the Under-Secretary-General for Peace-keeping Operations, Mr. Marrack Goulding, and of Mr. Alvaro de Soto, Senior Political Adviser to the Secretary-General, various adjustments were made to the timetable culminating in the formal ending of the war.

36. The deferral of implementation dates has created difficult situations that have threatened the normality of the process. FMLN indicated that the failure to implement a number of agreements in a timely manner "upset the balance" of the set of agreements, whose implementation had been scheduled in such a way as to ensure that some events occurred earlier than others and not vice versa. Specifically, FMLN maintained that the delay in settling the land issue, as well as the delay in the beginning of the activities of the National Public Security Academy and, consequently, those of the National Civil Police, had deprived FMLN combatants of channels for reintegration into civilian life,

as provided for in the agreements, which, for that very reason, had stipulated that such issues should be settled by 31 October 1992, the agreed date by which the military structure of FMLN was to have been ended. The agreements on the effective transfer of land were the subject of serious differences of interpretation by the parties. The resulting crisis was solved by a new agreement based on a programme outlined in a proposal which was made by the Secretary-General on 13 October 1992, was accepted by the parties and includes guarantees that the current landholders will not be expelled until a satisfactory legal solution to the problem has been found.

37. FMLN also indicated that the delay owing to the extension of the time-limits specified in respect of the Ad Hoc Commission for the Purging of the Armed Forces (see paras. 191 and 244 below) meant that the implementation of the Commission's recommendations would take until after 31 October 1992, whereas it had been agreed that it should take place before that date.

38. In this context, the dismantling of the FMLN military structure could not be completed on the scheduled date so that the armed conflict could be ended once and for all; the Government therefore decided to suspend the implementation of certain agreements relating to the armed forces, particularly as regards purging and reduction. With the good offices of the United Nations, however, agreements were reached with the parties so that this objective could be achieved on 15 December 1992. In addition, the administrative decisions relating to implementation of the recommendations of the Ad Hoc Commission for the Purging of the Armed Forces were to be communicated by the Government to the Secretary-General on 29 November 1992, for effective implementation on 31 December 1992.

39. However, as shown in greater detail later in this report (paras. 244-250 below), the recommendations of the Ad Hoc Commission were not fully and satisfactorily implemented on the scheduled date. According to the report submitted by the Secretary-General to the Security Council, 15 officers who were to have been dismissed on 31 December 1992 remained in their posts in the armed forces, apparently so that they could be kept in place until the end of President Cristiani's term of office. This is a sensitive issue which adversely affects the general political context and shows how fragile the transition process still is.

40. Another matter of concern, as stated in greater detail below, is that a last batch of FMLN weapons which could not be destroyed for technical reasons on the planned date was also not destroyed within the time-limit which FMLN had set itself vis-à-vis the Secretary-General (para. 111 below). This also adversely affects the credibility of the process.

41. Generally, however, it may be seen that progress has been made in political coexistence, although there are frequent mutual recriminations about compliance with the agreements. Investigating such recriminations does not form part of the Independent Expert's mandate or his task; it is in order to carry out such activities that the United Nations Observer Mission in El Salvador (ONUSAL) is in place. However, what does form part of his mandate is assessing the impact of the implementation of the Peace Agreements on the

effective enjoyment of human rights; this report therefore contains a reference to the implementation of the Agreements in chapter III relating to that part of his mandate.

II. CONSIDERATION OF THE HUMAN RIGHTS SITUATION

42. Chapter III of the report submitted by the Independent Expert to the General Assembly (A/47/596) contains ample information on the human rights situation in El Salvador during the period from January to September 1992. In order to keep this report to the Commission on Human Rights within reasonable proportions, the Independent Expert will not repeat that information and refers the reader to his report to the General Assembly. This chapter deals with allegations of human rights violations during the period from October to December 1992 which were reported to him during his second visit to El Salvador. Verification and follow-up of the reports will no doubt engage the attention of the ONUSAL Human Rights Division.

A. Right to life

1. Extrajudicial, summary or arbitrary executions

43. The opinion generally expressed to the Independent Expert during his second visit to El Salvador was that, at the present time, extrajudicial, summary or arbitrary executions are not widespread and systematic practice originated by the authorities. However, he received many reports of murders in which it was often not possible to identify a clear political motive. In some cases, although those designated as responsible are members of the armed forces or National Police, they do not appear to have acted in an official capacity but rather as common criminals and in violation of the regulations by which they are bound. In other cases, it proved impossible to identify the principals. Although it cannot be asserted that these reports point to an organized practice, they cause concern due to their high number, the seriousness of the acts reported and the destabilizing consequences on the peace process which they may have unless effective measures are adopted to prevent and punish such acts.

44. During his second visit to El Salvador, the Independent Expert was informed that the ONUSAL Human Rights Division declared admissible 190 complaints concerning executions and deaths during the period from January to November 1992. He also received information from non-governmental organizations about the events which are summarized below.

45. At 7 p.m. on 22 October 1992, Mr. Miguel Angel Alvarado, aged 36, a member of the Federation of Agricultural Produce and Animal Husbandry Cooperatives of El Salvador (FEDECOPADES), who was the treasurer of the Monte Verde cooperative, was murdered in his home situated on land belonging to the cooperative in the village of Los Marranitos, Azacualpa Canton, Zacatecoluca District, La Paz Department. The report stated that the perpetrators of the crime were five uniformed soldiers, two of whom wore the flashes of the Military Detachment of Engineers of the Armed Forces (DMIFA). Earlier, military personnel were reported to have set up a post on the highway, at the entrance to the cooperative.

46. Mr. Carlos Antonio Montoya Huezo, aged 42, a driver, died on 7 October 1992 at 10.30 p.m. in a police post set up at the entrance to the village of Las Flores, Soyapango District, Department of San Salvador, after being shot by an officer of the National Police. The policemen were reported to have put pressure on eyewitnesses to state that Montoya Huezo had fired at them, which they refused to do. Half an hour after the events, the policemen reportedly returned to the scene of the murder in order to steal the victim's possessions and place a weapon in his hand. The judicial authorities have ordered the pre-trial detention of Heriberto Calderon Guillen and Manuel de Jesus Flores Zaldaña, officers of the National Police in Soyapango, Italo Enrique Delgado, an officer of the National Police in Ilopango, and Mauricio Ortiz Díaz, a member of the Monserrat Battalion, in order to establish their responsibilities with regard to the commission of the offence.

47. Maria Magdalena Lemus Pineda, aged 20, domestic worker, and Angel Alberto Bonilla Cartagena, aged 21, died on 2 November 1992 in the village of Amatepec, Soyapango District, Department of San Salvador, as a result of shots fired at point-blank range by an officer of the National Police, Alexander Enrique Amaya Hernandez, who was handed over to the courts and is at present in detention.

48. Jose Santos Hernandez, aged 33, a taxi-driver, died on 23 October 1992 at 8 p.m. as a result of the shots fired by three uniformed members of the armed forces armed with M-16 rifles at the El Retiro cooperative, Los Angeles Canton, Conchagua District, Department of La Union. The body of the victim had five wounds caused by M-16 rifle bullets.

49. Mario Quintanilla Vaquerano, aged 18, mechanic, lost his life on 17 October 1992, at 8 p.m. inside his home in El Porvemir Abajo Canton, Concepcion Batres District, Department of Usulutan as a result of shots fired by a member of the armed forces who was accompanied by two other soldiers and a corporal, all wearing black uniforms, carrying M-16 rifles and with their faces covered. When they left, the soldiers threatened to kill the witnesses. The body of the victim bore six wounds caused by M-16 rifle bullets.

50. On 23 October 1992, William Roberto Hernandez Castro, aged 22, shopkeeper, was murdered by a soldier of the Fifth Infantry Brigade, Jose Nicolas Serrano Sanchez, in the vicinity of the military training camp called "El Poligono", in the Concepcion District of the city of San Vicente, District and Department of San Vicente.

51. Juan Arnulfo Garcia Gamez, aged 35, member of the Security Corps of FMLN Commander Javier Castillo and a former FMLN combatant, died on 17 November 1992, at 6 a.m., as a result of shots fired at point-blank range inside a bus by persons who feigned a hold-up on the San Marcos-Colonia Miralvalle road, opposite San Miguelito market in the city of San Salvador. The murderers did not demand that the victim hand over his personal effects but shot him twice without warning, killing him instantly.

52. On 13 and 14 December 1992, the bodies of the following persons were found on the El Ranchon farm in El Angel canton, Apopa District, Department of San Salvador: Juan Francisco Melgar Trujillo, aged 35, building worker, with marks caused by having his hands tied and with multiple injuries to the face

and neck caused by a sharp weapon; Fernando Amilcar Chavez Fuentes, aged 18, student, whose arms had been tied behind his back and who had been decapitated; Herbert Giovanni Mejia Hernandez, aged 19, whose right hand had been amputated and who had multiple neck injuries caused by a sharp weapon; Santos Ceferino Galindo, with multiple face and neck injuries caused by a sharp weapon; Jose Samuel Peña, aged 23, with a gunshot wound in the abdomen; and the body of another person who could not be identified.

53. On 31 October 1992, the body of Samuel Galan Quintanilla, aged 23, day labourer, with injuries caused by a sharp weapon and a gunshot wound, was found in the middle of scrub in the Canton of Tres Ceibas, Second Zone, Armenia District, Department of Sonsonate. The bodies of two other persons who could not be identified were also found. One body had the thumbs tied and a rope round the neck, and the other had the feet tied; both bore gunshot wounds.

54. On 7 December 1992, the body of an unidentified woman was found in a gully on Bélgica farm in the vicinity of Coloniá Esmeralda, El Congo District, Department of Santa Ana. The corpse had third-degree burns, caused by acid, on the face, neck, shoulder, left arm and right thigh.

55. The body of Mr. Jaime Arturo Cazún Vásquez, aged 39, a member of the Coffee Industry Trade Union in (SICAFE), was found on 15 October 1992, with unmistakable torture marks in a suburb of Barrio Las Animas, Chalchuapa District, Department of Santa Ana. Despite the marks of torture, the judicial authorities are reported to have decided not to carry out the autopsy required by law in these cases, for "health reasons".

56. On 30 September 1992, the body of José Raúl Rivera Sanabria, aged 24, former member of the National Guard, was found at kilometre 78 on the road to Cerro Verde, Izalco District, Department of Sonsonate. The body had an injury caused by a 45-calibre bullet. The victim's personal effects were intact, for which reason his relatives rule out theft as a motive of the crime.

57. Angel Danilo Martínez Murcia, aged 21, died on 23 October 1992, when four soldiers from the Atlacatl Battalion, identified in the report as Martin Pineda, Rafael Antonio Rivera Avelar, José Israel González Murcia and Juan Miguel López Córdova, entered his home in Santa Rosa Canton, Ciudad Arce District, Department of La Libertad, with the apparent intention of committing burglary.

58. The Independent Expert received a report of the existence of a gang of criminals led by a member of Military Detachment No. 2 which is said to enjoy the complicity of members of the Sensuntepeque National Police; the gang carried out various armed hold-ups during the night of 6 November 1992 in Colonia Palermo, Barrio Santa Barbara, Sensuntepeque District, Department of Cabañas. The soldier and another member of the gang were arrested by local residents, who handed them over to the Sensuntepeque National Police in the presence of members of the ONUSAL Police Division. However, the other members got away, and some hours later murdered Mr. Jesús Santos Ramos, aged 56, building worker, whose body was found decapitated, with two bullet wounds and

an injury caused by a blunt instrument. The members of the gang who were handed over to the National Police were not referred to the appropriate courts despite having been captured flagrante delicto and are said to be at liberty.

2. Attacks

59. During his second visit to El Salvador, the Independent Expert was informed that José Mario Moreno Rivera, member of the FMLN Sonsonate Departmental Political Committee, whose pseudonym was "David Alejandro Gavidia", was attacked at 5 p.m. on 20 October 1992. The attack was perpetrated by four persons wearing olive green uniforms and armed with M-16 rifles, on the road from Sonsonate to Santa Ana, Los Apantes Canton, Juayua District, Department of Sonsonate. It is reported that members of the Juayua National Police refused to accept the complaint lodged by Moreno Rivera.

60. Mrs. María del Carmen Flores, aged 54, was the victim of an attack in which explosives were thrown into her home and killed her. Nicolás Alvarado and Carlos Flores Alvarado were injured by shrapnel from the bombs. The incident occurred at 1 a.m. on 12 October 1992 in San José Obrajuelo Canton, San Rafael Obrajuelo District, Department of La Paz.

61. The home of former FMLN Commander Rebeca Palacios was attacked by three persons dressed in civilian clothes and armed with sub-machine guns who entered her home at a time when Mrs. Palacios was absent and left without stealing anything. The incident occurred at 6.30 a.m. on 23 October 1992, in Colonia La Rábida, city of San Salvador, District and Department of San Salvador.

62. The Vice-Chairman of the Commission for the Defence of Human Rights in Central America (CODEHUCA), Mirna Perla de Anaya was attacked on 3 January 1993, at 7.15 p.m., on the road from Suchitoto to San Salvador at a place called "La Pedrera". Her vehicle was fired at by six hooded men wearing military uniforms and caps. Her son, Miguel Ernesto, aged 15, was injured. Mrs. Mirna Perla de Anaya is the lawyer of César Vielman Joya Martínez, who is said to have confessed to membership of one of the "death squads" and to have made charges against officers in the armed forces.

63. The deputy Miguel Angel Spinal was attacked in November 1992 in San Miguel. His vehicle was hit by bullets 24 times but there were no casualties.

3. Death threats

64. The Independent Expert was informed during his second visit to the country that the ONUSAL Human Rights Division had declared admissible 282 reports concerning death threats during the period from January to November 1992.

65. On 23 October 1992, an extreme right-wing group, calling itself the "Maximiliano Hernández Martínez Brigade", issued a communique threatening to kill the FMLN leaders Shafick Handal, Francisco Jovel, Leonel González, Joaquín Villalobos, Eduardo Sancho, Ana Guadalupe Martínez, Jorge Meléndez,

Salvador Samayoa, Facundo Guardado, José Alberto Ramos, Fidel Recinos, Marcos Jiménez, Nidia Díaz, Salvador Guerra, Chano Guevara and Leo Cabales. The communiqué warns "ONUSAL officials, foreign journalists and all those who support the peace agreements" that they "should abide by the consequences of liberationist nationalist justice".

66. The Director of the Family and Community Guidance Centre (CREFAC), Celina de Monterrosa, and Doris Romero and Ramón Villalta, members of the Centre, also received death threats on 8 October 1992.

67. In its edition of 8 December 1992, the evening newspaper Diario El Mundo published a communiqué from the group which proclaims itself the "Salvadorian Revolutionary Front" and claims to represent former combatants from both sides. The communiqué stated "We shall not lay down our arms until our people achieves genuine peace with social justice".

68. It was also reported that the following persons had received death threats: Eduardo Rafael Blandón Lemus, aged 40; David Ayala Zamora, aged 34; Adrián Antonio Carrero, aged 36; and Luis Roberto Campos Molina, aged 39.

69. With regard to death threats, the Director of the ONUSAL Human Rights Division emphasized the need to provide effective protection for the victims of death threats and to implement measures to halt such practices, such as those established in the Principles endorsed by the General Assembly in its resolution 44/162 of 15 December 1989. In particular, he recommended that measures should be taken to identify the authors of flyers signed by clandestine organizations and to adopt regulations prohibiting radio or television broadcasting of threatening messages, without prejudicing freedom of the press (A/46/955-S/24375, para. 94).

B. Enforced or involuntary disappearances

70. The Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights has analysed the situation of disappearances in El Salvador in the 13 annual reports submitted to the Commission. The Working Group has transmitted to the Government of El Salvador 2,598 cases, of which only 379 have been cleared up. However, only one of the 2,598 cases occurred in 1992.

71. The ONUSAL Human Rights Division declared admissible 15 complaints that in principle could represent enforced or involuntary disappearances during the period January-May 1992. However, on investigating those complaints, the Mission concluded that it had so far been unable to establish convincingly that they involved enforced or involuntary disappearances (A/46/955-S/24375, annex, para. 26). The Mission recommended that simple, flexible mechanisms should be set up to enable complainants to ascertain the whereabouts of the person concerned quickly (ibid., para. 95). The establishment by the Supreme Court of Justice of the Detainee Information Department appears to have helped to expedite the location of detained or arrested persons.

72. During his second visit to El Salvador, the Independent Expert was informed that Mr. Eulogio Juárez Pérez, aged 60, was arrested on 10 October 1992 at Mandinga bridge, Salinas Ayacachapa District, Department of

Sonsonate, by members of the National Police. The National Police has not provided his relatives with any information concerning his whereabouts, despite the requests made and the steps taken.

73. However, on the basis of the information received and the general opinion expressed in the course of his two visits to El Salvador, the Independent Expert concludes that, at the present time, enforced or involuntary disappearances do not constitute a systematic practice in the country.

C. Right to freedom from torture and other cruel, inhuman or degrading treatment or punishment

74. The ONUSAL Human Rights Division reported that torture is not a systematic practice at present, although it was able to confirm the use of torture in a limited number of cases. From January to May 1992, four complaints of torture and 105 complaints of cruel, inhuman or degrading treatment or punishment were received (ibid., para. 30). During the period from June to November 1992, there were 167 complaints falling into both categories, according to reports received by the Independent Expert during his second visit to the country. The Independent Expert was also notified by non-governmental organizations of the cases described below.

75. José Jaime Fuentes Galindo, aged 24, domiciled in Avenida Peralta, Urbanización Don Bosco, San Salvador, died on 12 November 1992 in Rosales hospital in San Salvador as a result of blows delivered during the three previous days by officers of the San Salvador municipal police.

76. Leonardo de Jesús Vela Flores, aged 29, allegedly mentally deficient, was severely beaten by National Police officers in Quezaltepeque, on 2 October 1992, during questioning concerning the alleged possession of weapons. According to the report, Vela Flores was incapable of understanding the meaning of the questions.

77. Juana Antonia Recinos, aged 43, was severely ill-treated on 17 July 1992 by Armenia municipal police officers when she tried to intervene to protect a drunken man who was being kicked by the officers. Mrs. Recinos suffered a fractured finger of the left hand and received blows on the forehead from a rifle butt.

78. Juan Alberto Hernández Regalado, aged 17, was hit in the chest with a rifle butt by National Police officers during his detention on National Police premises in La Libertad. The incident occurred on 23 June 1992.

79. Pablo Alberto Meza Franco, aged 18, is reported to have been tortured on the premises of Sonsonate National Police and Armenia Town Hall, Department of Sonsonate, from 13 to 20 November 1992. His feet were tied and he was suspended by his feet from a beam while being beaten on the stomach, abdomen and back.

80. The ONUSAL Human Rights Division recommended that, in all verified cases of torture and cruel, inhuman or degrading treatment or punishment, legal proceedings should be instituted to investigate the facts and to detain, prosecute and punish the perpetrators, in accordance with domestic and

international law. It also recommended that the periods of administrative detention provided for in domestic law should be strictly adhered to, that incommunicado detention, which is prohibited by the San José Agreement, should be prevented and that future members of the National Civil Police should be given appropriate training (ibid, para. 97).

D. Right to liberty

81. The Peace Agreements as a whole include commitments whose implementation is intended to put an end to serious offences which occurred in the past against the right to liberty. The National Guard and the Treasury Police were disbanded as public security forces, the armed forces ceased to make arrests, the abolition of Civil Defence and the Territorial Service of the armed forces was ordered, the ONUSAL Human Rights Division carried out its verification activities, which had a deterrent effect, and the ONUSAL Police Division provided assistance and accompanying personnel to the national police. These measures contributed to a substantial improvement in the practical application of the right to liberty in El Salvador, although the Independent Expert has learned of various violations of this right, most of which were attributable to the municipal police and members of the officially disbanded Territorial Service.

1. Arbitrary or unlawful detention

82. The ONUSAL Human Rights Division received a total of 261 complaints of arbitrary or unlawful detention declared admissible during the period from January to May 1992 (ibid, paras. 49 and 79). During the period from June to November 1992, a further 167 complaints were declared admissible. The Division expressed particular concern about the fact that, even though the Peace Agreement provides for the disbandment of Civil Defence and the replacement of the Territorial Service by a new system of armed forces reserves, members of those groups have continued to make arrests and some judges have addressed detention orders to the local commanders of the Territorial Service, maintaining that there are no National Police personnel in their district (ibid, para. 53). The Mission also expressed concern about the activity of the Municipal Police forces and the fact that they systematically make arrests in a manner which rarely meets the minimum legal guarantees. Even though the Municipal Police is not a security body, in practice it discharges functions comparable to those of the National Police and plays an important role in the area of minor offences (ibid, para. 57).

83. The Independent Expert received complaints to the effect that arbitrary or unlawful detentions, particularly those deriving from alleged minor offences, are widespread and systematic. According to these complaints, many people are arrested solely on the basis of the subjective and personal judgement of members of the Municipal Police when they are in a state of intoxication or are disturbing public order in some way.

84. In view of this situation, the ONUSAL Human Rights Division recently carried out a verification operation in police and municipal detention centres (known as "bartolinas"), throughout the country, and concluded that more than 10,000 persons were being held for alleged minor offences over a three month period. The ONUSAL operation, carried out simultaneously in a number of towns, led to the conclusion that far too little respect was still being shown

for the provisions of domestic law and of paragraph 2 (b), (c) and (e) of the San José Agreement regarding the right to be arrested only if ordered by the competent authority in writing and by officers who are identified as such, the right to be informed immediately of the reasons for the arrest, the prohibition against detaining persons incommunicado and the right to be assisted without delay by the legal counsel of one's choice. Even the constitutional provision of 72 hours as the maximum period of administrative detention has not always been observed; nor is there effective recourse against the decisions of the police with respect to arrests (ibid, paras. 55 and 58).

85. The Independent Expert was informed during his second visit to El Salvador that the verification operation referred to in the previous paragraph made it possible to establish machinery for coordination between the ONUSAL Human Rights Division and National Police Headquarters, with a view to finding solutions to the serious problem of arbitrary or unlawful detention. The Division set up a working group in close cooperation with National Police officials in order to work out means of overcoming the shortcomings identified. New rules of procedure were thus adopted for arrests for minor offences; their application has led, at least initially, to a notable reduction in human rights violations connected with arbitrary detention, according to the information received by the Independent Expert from the Director of the Human Rights Division.

86. Where the arrest of juveniles is concerned, the ONUSAL Human Rights Division recommended that the authorities should hand minors over to the juvenile courts without delay and that adults and juveniles should be confined separately in detention centres. It also recommended increased supervision of police officials and juvenile reform centres and improved staff training (ibid., para. 100).

2. Forcible recruitment

87. The ONUSAL Human Rights Division declared admissible 136 complaints for forcible, irregular or arbitrary recruitment during the period January-May 1992. This issue was dealt with at length in the Division's second report (A/46/658-S/23222 and Corr.1, annex, paras. 107-120), which considered that irregular or arbitrary recruitment violated the right to liberty and that the two Ministry of Defence instructions on the subject failed to remedy the improper recruitment procedures and were not widely known. The fifth report of the Director of the Division stated that the work done by the ONUSAL observers was extremely important in helping to secure the discharge of irregularly recruited persons who met the requirements for exemption stipulated in the Ministry of Defence instruction on granting exemptions from compulsory military service (A/46/955-S/24375, annex, para. 59).

88. The fourth and fifth reports of the Director of the Human Rights Division pointed out that irregular recruitment, on the part of both the armed forces and FMLN, gradually ceased with the signing of the Peace Agreement of 16 January 1992 (A/46/935-S/24066, annex, para. 1, and A/46/955-S/24375, annex, para. 60).

3. Freedom of movement

89. The fourth and fifth reports of the Director of the ONUSAL Human Rights Division said that freedom of movement had been completely restored with the signing of the Peace Agreement on 16 January 1992 (A/46/935-S/24066, annex, para. 1, and A/46/955-S/24375, annex, para. 61). During his second visit to El Salvador, the Independent Expert was informed that only 22 complaints concerning violations of this right were declared admissible in the period from January to November 1992.

E. Right to due process of law

90. The ONUSAL Human Rights Division declared admissible 318 complaints of violations of the right to due process of law submitted during the period January-May 1992. During his second visit to the country the Independent Expert was informed that the ONUSAL Human Rights Division had admitted another 316 complaints during the period June-November 1992. The fourth report of the Director of the Human Rights Division emphasized this right (see A/46/935-S/24066, annex, paras. 19-38), because the cessation of the armed conflict had brought to the forefront the problem of the judicial protection of human rights and the structural deficiencies of the Salvadorian judicial system (see A/46/955-S/24375, annex, para. 36).

91. A number of non-governmental organizations told the Independent Expert that they were concerned at the ineffectiveness of the Salvadorian system of justice for guaranteeing the right to due process of law and for ensuring that human rights violations are investigated and that those guilty of violations are brought to trial and punished. These factors persist despite the presence of the ONUSAL Human Rights Division and the recent establishment of the Office of the National Counsel for the Defence of Human Rights.

92. The Independent Expert stressed in his report to the General Assembly and does so again that the structural deficiencies which continue to exist in the judicial system constitute a serious problem, which must be overcome if a solid system of effective observance of human rights is to be established in El Salvador (see below, paras. 147-174).

1. Pre-trial detention

93. The Director of the ONUSAL Human Rights Division recommended in his fourth report that persons should be subjected to pre-trial detention only where such detention was necessary to ensure their presence at the trial or to prevent obstacles being placed in the way of the investigation. He also said that the maximum period of 72 hours established by article 244 of the Code of Criminal Procedure for the conduct of investigations should be used by judges only where the gravity of the offence and the difficulties of the investigation render this strictly necessary. He reported a case in which an accused person detained on the order of a judge of first instance was held after his arrest for 70 days in a National Police cell, and another case in which an accused person had still not made a judicial statement 10 days after his arrest. He said that release from custody was so restricted and difficult to obtain that pre-trial detention had ceased to be a way of ensuring the presence of the accused at the trial and was becoming a form of advance

service of a sentence, notwithstanding the principle of presumption of innocence. Among the prison population, there is an extremely high ratio of prisoners awaiting trial to convicted prisoners (see A/46/935-S/24066, annex, paras. 30, 31 and 52).

94. During his first visit to the country, the Independent Expert also met the defence lawyer Adolfo Aguilar Payés, who is accused of the killings of the political analyst Edgardo Antonio Chacón and Gabriel Eugenio Payés Interiano. According to the defence lawyer, the only evidence against Aguilar Payés was an extrajudicial statement given under torture to the now disbanded Treasury Police. Aguilar Payés had been in detention since 23 July 1989. The public hearing was postponed by the judge on the grounds that the case had received too much publicity and because the lawyer had refused to draw lots for jurors from among the names put in a bag by the judge. During his second visit, the Independent Expert was informed that with the active intervention of the Office of the National Counsel for the Defence of Human Rights, the public hearing had finally been held and that the accused had been released after being acquitted by a jury on 2 December 1992.

2. Incommunicado detention

95. Although incommunicado detention is prohibited by the Constitution, by various international treaties ratified by El Salvador and by the San José Agreement, the ONUSAL Human Rights Division found a number of cases in which detainees were being held incommunicado. The Mission said that there should be no derogation from the prohibition on incommunicado detention and that it could not be modified by the application of disciplinary measures in prison or during pre-trial detention. It recommended that that prohibition should be incorporated explicitly in the Code of Criminal Procedure (ibid., paras. 25 and 50).

3. Right to legal counsel

96. The ONUSAL Human Rights Division reported that a large proportion of prisoners, many of whom have been incarcerated for more than four or five years, have never seen a lawyer. Even prisoners who have a private defence lawyer rarely see him. The Mission also found that the majority of prisoners it interviewed in the country's main penitentiary were unaware of their right to select a defence lawyer at the start of the proceedings. Administrative transfers of detainees, without notice to judges and lawyers, make the exercise of the right to legal counsel even more difficult (ibid., para. 26).

97. The Deputy Minister of Justice informed the Independent Expert that his Ministry had been working on a number of preliminary bills relating to due process (see para. 236, below), one of which was recently approved by the Legislative Assembly. This is the Legal Aid and Public Defenders Act, the purpose of which is to guarantee respect for the right to legal counsel. The Independent Expert also believes that it is necessary to develop advanced training programmes for public defenders and to provide more resources and more court-appointed lawyers to the judicial system.

4. Judicial investigation of crimes

98. The Director of the ONUSAL Human Rights Division expressed concern at deficiencies in the investigation of crimes and drew particular attention to the fact that there had been no significant progress in the systematic investigation of attempts on human life. He recommended strict respect for domestic law on the gathering of evidence (A/46/876-S/23580, annex, para. 160).

99. The judicial proceedings currently under way to establish what happened and who was responsible in the case of the reported collective summary execution at the hamlet of El Mozote in the Department of Morazan deserve comment because of the magnitude of the crime and its impact on society. The killings took place over 10 years ago, but it was only recently that a judicial investigation was launched. That investigation requires the exhumation of skeletal remains and their analysis by highly specialized personnel. Although this was requested by the complainant and specifically recommended by ONUSAL (see A/46/876-S/23580, annex, para. 161, and A/46/955-S/24375, annex, para. 91), no decision had been taken to have the remains exhumed with the assistance of international experts in forensic anthropology. Some non-governmental organizations explained to the Independent Expert that the judge had not taken the aforesaid decision because he had been told not to by the President of the Supreme Court of Justice. When the Independent Expert raised this issue on his first visit to the President of the Supreme Court, he was told that the bodies could not be exhumed until the Commission on the Truth had so requested and that foreign experts could take part only if they had the corresponding government accreditation. The required accreditation was provided and the Commission on the Truth requested the exhumations, which were then begun on 13 October 1992. The first skeletal remains of the victims were found on 15 October. The autopsies on the 119 bodies so far found at the site, most of them children, had not been completed by the end of the year.

5. Delay in the administration of justice

100. The Director of the ONUSAL Human Rights Division reported that in El Salvador the time-limits for instituting proceedings (120 days) and conducting a trial are not adhered to. In 1991, out of 4,755 prisoners awaiting trial, criminal courts and courts of first instance passed final sentences on 1,532, of whom 745 were acquitted. The Mission found that there was a need to increase the number of judges and court personnel, to improve the physical infrastructure available to them and to provide advanced training to staff involved in the administration of justice. To ensure respect for the right to be tried without undue delay, the Mission recommended that the organization of the administration of justice and of the Public Prosecutor's Office should be strengthened by implementing the reforms of the judicial system incorporated into the Constitution as a result of the Peace Agreement.

101. The Archbishop Oscar A. Romero Christian Legal Aid Office told the Independent Expert that a radical complete overhaul of the judicial system is far from imminent. Timid attempts at change, some of which were proposed long before the end of the armed conflict, are moving ahead either very slowly or not at all. The Salvadorian Human Rights Commission (non-governmental)

complained of what it views as delays and negligence in the conduct of judicial proceedings, especially proceedings to identify persons responsible for human rights violations. It reported that in such cases investigations are limited to establishing that a crime has been committed by making a visual inspection, examining the body and hearing the statements of complainants and the evidence of witnesses, and no investigations are undertaken to identify and arrest the culprits. It even complained of difficulties in reviewing the judicial files that its lawyers requested. In one specific case of delayed administration of justice, it reported that Pedro Antonio Portillo León had remained in prison on a charge of homicide without the name of the alleged victim being given or the place, date or circumstances of the crime being established. The defence lawyer requested a stay of proceedings but the judge took several months to rule on the appeal.

F. Freedom of expression and the press

102. During his second visit to El Salvador, the Independent Expert was informed that the ONUSAL Human Rights Division had declared admissible 20 complaints relating to violations of the right to freedom of expression during the period January-November 1992.

103. Various non-governmental organizations expressed particular concern to the Independent Expert at the repeated publication of paid inserts in the Salvadorian press containing death threats or incitement to hatred and violence. Those inserts are placed by clandestine organizations in an attempt to undermine the rights and security of persons and the reputation of various institutions, such as the Catholic Church and ONUSAL. Designed to foster hatred and division within Salvadorian society, they are appearing at a time when the country is endeavouring to achieve genuine national reconciliation as part of the peace process. It should be recalled that the mass media are required by Salvadorian law to demand that those placing an insert provide proof of their identity, and to reveal that identity if the content of the insert has endangered individuals. The publication of such inserts infringes article 6 (1) of the Constitution, the International Covenant on Civil and Political Rights, the American Convention on Human Rights and articles 6 and 9 of the Press Act. However, the authorities appear to have adopted a passive attitude towards them. Legal Protection told the Independent Expert that that attitude seems to indicate that the clandestine groups responsible for such inserts are not being investigated and are consequently acting with complete impunity.

104. The Salvadorian Press Agency (SALPRESS) told the Independent Expert during his first visit to the country that its main office in San Salvador had been the target of arson on 2 July 1992. The fire destroyed the Agency's archives and the professional equipment needed for its work. On 27 August 1992, the Agency received a telephone call threatening a further fire. Two days later, Ricardo Gómez, the Director of the Agency, received a death threat by telephone.

G. Economic, social and cultural rights

105. There follows an account of various complaints received by the Independent Expert in connection with economic, social and cultural rights. Elsewhere in this report reference is made to the impact that implementation of the peace agreements is having on the effective enjoyment of those rights (see below, paras. 205-220).

106. The Independent Expert was informed that at 1700 hours on 17 September 1992, three individuals armed with guns opened fire on the offices of the Federation of Independent Associations and Trade Unions of El Salvador (FEASIES) and the 21 June ANDES cooperative. A passer-by was fatally wounded in the shooting. FEASIES members said that their office was under permanent surveillance by persons unknown. In May, one of these persons was searched by union members, who found on him an identification card of the Armed Forces Social Welfare Institute.

107. The Federation of Trade Unions of the Construction, Transport and Allied Industries (FESINCONSTRANS) informed the Indepedent Expert that its General Secretary had been arrested on 7 January 1992 by members of the air force.

108. El Espino Cooperative, which claims to have 5,000 members, informed the Independent Expert that the Government is trying to return a large part of the El Espino estate to its former owners, even though they have already been paid over 100 million colones in compensation for the estate's expropriation. Cooperative members said that that would be a major setback for the agrarian reform process and a serious threat to the existence of other cooperatives in the reformed sector. They complained that the Government had ordered the Agricultural Development Bank to deny them farm credit. They said that El Espino estate is a symbol of the agrarian reform in El Salvador and that the Government is trying to relocate the cooperative on a 300-hectare lot on the highest part of the estate and to hand over 144 hectares to three former owners for urban development.

109. The National Salvadorian Women's Committee (CONAMUS) told the Independent Expert that in rural areas only 34 per cent of women receive medical attention during childbirth. It said that the leading cause of death among women nationwide is complications of pregnancy, such as bleeding, infection and miscarriage, which could be prevented if the necessary medical care was available. It said that 84 per cent of women living in rural areas are illiterate and that the national illiteracy rate for women is 59 per cent. In the professional sphere, only 2 per cent of engineers, 4 per cent of lawyers and 14 per cent of doctors are women. It said that 60 per cent of households are headed by women, even though 61 per cent of economically active women are currently unemployed. In political parties and the leadership of trade unions, it has been usual for women to be confined to such positions as secretary responsible for minutes or secretary for women's affairs. Lastly, it reported that Salvadorian women constantly face domestic violence, street violence and sexual harassment in the workplace.

H. International humanitarian law

110. In his report to the General Assembly, the Independent Expert, like the Special Representative before him, devoted a section to complaints received about violations of international humanitarian law. He explained then that he was continuing to do so because the country was going through a period of cessation of the armed conflict which had not yet brought the hostilities to a formal end (A/47/596, para. 105). That is no longer the situation at the time of this report since, as has already been said, on 15 December 1992 the war was formally ended, so that it is no longer appropriate to make specific comments on international humanitarian law.

111. Nevertheless, the Independent Expert has to note with concern that, according to the report submitted by the Secretary-General to the Security Council on 29 January 1992, the destruction of FMLN's armaments, which was to have been completed by 15 December, was still pending, despite FMLN's undertaking to start the process of destruction again on 22 January and finish it a week later. This implies a disturbing failure to abide by the undertakings deriving from the Peace Agreements, which is even more serious if one considers that it implies that some component of the military structure continues to exist after acquiring the status of a legal political party under the rules of the democratic game.

112. In the same context, mention should be made of the progress achieved in re-establishing the public administration in the former zones of conflict. The Independent Expert was informed by ONUSAL that there had been a steady return to normal in this field and that mayors were gradually returning to their posts. Although some incidents have been recorded, the main problems to be faced have been practical or material ones, which gives grounds for hoping that the situation will soon become as normal as possible.

III. IMPACT OF THE IMPLEMENTATION OF THE PEACE AGREEMENTS ON THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS

113. In view of the scope of the violations of human dignity being committed in El Salvador, the promotion and protection of human rights and the introduction of structural reforms designed to guarantee and ensure respect for those rights inside the country were among the primary objectives in the peace negotiating process initiated in April 1990 within the framework laid down by the Geneva Agreement.

114. Compliance with the Peace Agreements in letter and spirit provides a real opportunity, perhaps unprecedented in the history of the country, to jettison a structure which allowed the most serious human rights violations to be committed and imposed an unjust system of economic and social control on most of the population.

115. At the outset of the negotiations, the Geneva Agreement defined the objective of the parties as being: "... to end the armed conflict by political means as speedily as possible, promote the democratization of the country, guarantee unrestricted respect for human rights and reunify Salvadorian society" (Geneva Agreement, No. 1). The complexity of the agreements and the protracted negotiations that led to them reflect the

intention of the parties to seek solutions that went beyond a cessation of the armed conflict to a reduction and reform of the armed forces and the dismantling of the military structure of the FMLN. As the President of the Republic said, when he signed the Peace Agreement at Chapultepec, "... what is now beginning to happen in El Salvador is not the re-establishment of a pre-existing peace, but the beginning of a genuine peace based on social consensus, on a harmonious relationship between social, political and ideological sectors and above all on the conception that the country is a unified whole without exclusions of any kind". The parties forged a peace that was not just the end of war, but a collective national undertaking to build a new society from which the root causes of the conflict had been eliminated.

116. The most outstanding of those causes is in fact related to the systematic failure to respect human rights, civil and political as well as economic, social and cultural. Thus, the objective of guaranteeing "... unrestricted respect for human rights" constitutes, as it were, the spinal column of the set of agreements reached between the Government and FMLN with the support of the broadest sectors of Salvadorian society.

117. For instance, in the San José Agreement of 26 July 1990, although the meaning of "human rights" was interpreted in the broadest sense, 4/ certain priority problems were singled out requiring action and specific measures designed to prevent acts or practices threatening the life, integrity, security or freedom of the individual; to fully guarantee the freedom and integrity of the person; to ensure the effectiveness of the remedies of amparo and habeas corpus; to fully guarantee the right of all persons to associate freely with others, including trade union freedom; to fully guarantee freedom of expression; to meet the urgent needs of displaced persons and returnees as well as those living in conflict zones and to recognize the necessity of guaranteeing the effective enjoyment of labour rights (A/44/971-S/21541, annex, paras. 1-9).

118. The Agreement also deals with State responsibility for guaranteeing human rights, an even broader mandate than that described above in that it imposes on the State the obligation to ensure the effective enjoyment of human rights by all possible means, including appropriate and accessible mechanisms for judicial and administrative protection, prevention and investigation whenever necessary in order to establish the truth, and to identify the perpetrators and apply the prescribed penalties. In that connection, the agreements envisage the introduction of new mechanisms for the protection of civil and political rights and the reform of others to bring them into line with the aforesaid mandate.

119. Economic, social and cultural rights are the subject of various provisions of the San José and New York Agreements and of one chapter of the Peace Agreement signed at Chapultepec on 16 January 1992.

120. The series of peace agreements establish various measures aimed at ensuring the effective enforcement of human rights and providing the State with appropriate instruments for discharging its obligation to its citizens and to the international community to respect and guarantee them. The agreements envisage the establishment or strengthening of permanent machinery

(A) for fulfilling that function, such as the National Counsel for the Defence of Human Rights, the National Civil Police and the judicial system. They also envisage the establishment of certain bodies and special and interim procedures (B) relating to follow-up verification of respect for human rights, such as ONUSAL for the San José Agreement, and such as the Commission on the Truth for the investigation and evaluation of past rights violations. Agreements were also reached in the area of civil and political rights to cope with situations in which the recurrence of the violations and their seriousness call for priority action and for removing the most egregious of the reasons generally given for the violation, which was a basic objective in the agreements concerning the armed forces (C). Finally, there were also agreements on other human rights (D), including political rights and economic, social and cultural rights. The implementation of those agreements should have a favourable impact on the effective enjoyment of human rights. Accordingly, there follow comments on the four sets of agreements in turn, together with the observations of the Independent Expert on how they are being implemented.

A. Agreements on permanent machinery for the protection of human rights

121. As stated earlier, human rights form a virtual spinal column of the set of peace agreements, so that a detailed examination of the impact of their implementation on the effective enjoyment of human rights - as called for in the Independent Expert's mandate - would be equivalent to making an exegesis of the entire content of the agreements, a task which exceeds the resources available to him. The analysis might more appropriately be focused on three institutions mentioned in the agreements that are vital in shaping a sound structure for the effective protection of human rights in El Salvador. Two of them emerged from the peace process itself: the National Counsel for the Defence of Human Rights and the National Civil Police. The third is the judicial system inasmuch as its reform was discussed at the negotiating table and it was dealt with in several agreements.

1. The National Counsel for the Defence of Human Rights

122. The constitutional reform that came out of the Mexico Agreements of 27 April 1991 and was duly endorsed by the Legislative Assembly created the post of National Counsel for the Defence of Human Rights. The Legislative Assembly adopted the Act establishing the Office of the National Counsel for the Defence of Human Rights on 20 February 1992 and appointed Dr. Carlos Mauricio Molina Fonseca to the post a few days later.

123. The terms of reference of the Office include *inter alia*: to investigate *proprio motu* or on the basis of a complaint he has received cases of human rights violations; to assist alleged victims of human rights violations; to promote judicial or administrative remedies; to monitor the situation of persons deprived of their liberty; to carry out inspections; to give opinions on proposed legislation that would affect the exercise of human rights; to promote and propose such measures as he deems necessary to prevent human rights violations; to formulate conclusions and recommendations publicly or in private; to develop and publish material designed to promote knowledge of, and respect for, human rights. 5/

124. The Act establishing the Office of the National Counsel for the Defence of Human Rights contains a broad definition of those rights 6/ that helps fully to delineate the scope of the National Counsel's competence. It states further that he is to act independently in exercising his function and shall not be subject to impediment or restriction by any authority. 7/ The Act also establishes the post of Assistant Counsel for the Defence of Human Rights as well as a number of Assistant Counsels for special categories (children, women, the elderly and the environment). It appears, however, that there are many departments but little activity. Although it was not specified in the Act, the National Counsel has appointed an Advisory Council, composed of representatives of various sectors, to provide social support for the work of the Office.

125. At the beginning of July, the Office announced in the press that it would begin its work on 27 July as a strong step towards consolidation of the peace. The delay in start-up operations was attributed by ONUSAL to delays in approving the budget for the Office. 8/ According to the information given by the National Counsel, owing to the contribution he was able to obtain through international cooperation, he had succeeded by the end of 1992 in getting the resources his Office needed to operate.

126. In his report to the General Assembly (A/47/596, para. 131), the Independent Expert stated that the existence of the Office of the National Counsel has not yet had an impact on the society at large or on the treatment of human rights and that it had not yet been ready to become involved in various situations and cases described in ONUSAL reports, where human rights violations persisted and the perpetrators had not been identified or punished. Various non-governmental organizations informed the Independent Expert that there had been no significant change in the situation up to the date of this report.

127. It is essential that a strong presence of the Office of the National Counsel for the Defence of Human Rights should be clearly seen by the population as effective machinery for asserting their rights. El Salvador is trying to escape from a period in which the resources for defending such rights were often more theoretical than real. If the Office did not make a social impact, the people would inevitably become sceptical about it and, what is worse, it would be seen as still another weak entity among so many others in the past history of El Salvador which were responsible for protecting citizens from the abuse of power.

128. During an interview with the Independent Expert on his second visit to the country, the National Counsel indicated that he was working valiantly to complete the mission allocated to his Office as quickly as possible and that he had already done a considerable amount of useful work. By 8 December 1992, 974 files were being dealt with, originating for the most part in complaints lodged by all social sectors and in other cases in proprio motu initiatives. He had established a procedure for investigating and following up cases, which had made it possible to achieve progress in the investigation stage, which all in all continued to present the greatest difficulties. The Office had also issued a number of warnings to judges and mayors for violations of human rights, which had had a positive effect. It was also working on the preparation of a reform of the law on police abuses, an archaic instrument

which lay behind many arbitrary detentions. The office had intervened decisively in the settlement of the case of Mr. Adolfo Aguilar Payés, described by the Independent Expert in his report to the General Assembly (A/47/596, para. 90), which had resulted in the public hearing of the case being opened and had led to the release of the person concerned (see above, para. 94). The National Counsel also stated that he believed the action that he could undertake for the protection of human rights would be more effective if it was carried out discreetly and that it was not his role to enter into conflict with other organs of the State.

129. The Independent Expert agrees that the Office of the National Counsel for the Defence of Human Rights is not called upon to engage in this type of confrontation. Nevertheless, as he told the National Counsel, it would not conflict with that principle to put out suitable public information on human rights questions. In point of fact, it is part of the National Counsel's functions to "prepare and publish reports" and to "formulate conclusions and recommendations both publicly and in private". 9/ Access to public opinion is not just a way of controlling the observance and safeguarding of human rights, but is also a means of making known the results of the action taken by the Office in the performance of its duties. It may therefore be suggested that on fixed dates, specified in advance, so that they cannot be chosen in the light of the current political situation, the Office of the National Counsel should publish periodic reports.

130. The Independent Expert would also like to stress two matters where a satisfactory outcome would be likely to have a favourable effect on the prompt fulfilment of its functions by the Office of the National Counsel. The first relates to the need for the Office to maintain machinery for close cooperation with the non-governmental organizations (NGOs) working in the country. Such cooperation, which already exists with some NGOs, should be intensified and extended on a basis of mutual collaboration, institutional respect and trust. The NGOs are natural channels of communication with the victims of human rights violations and possess great experience, which could enrich the work of the Office of the National Counsel for the benefit of the whole community. The second relates to the Office's presence in the field and involves the establishment of departmental and local branches as envisaged and authorized by the Constitution. The physical dimensions of the country are not very large: having Office branches only in the capital means in practice that inhabitants of the provinces face often insurmountable obstacles in contacting the Office to assert their rights.

131. The National Counsel asked the Independent Expert for his assistance, in the framework of the mandate conferred upon him by the Commission on Human Rights. The Expert provided the Counsel with a project for a workshop for the Office's management and field staff which could be implemented with the cooperation of the United Nations Development Programme and the Inter-American Institute of Human Rights.

2. National Civil Police

132. The National Civil Police (PNC) was established in accordance with the constitutional reform resulting from the Mexico Agreements; it was conceived by the parties as a new force with a new organization, new officers, new education and training mechanisms and a new doctrine. The PNC is to be under the exclusive control of the civil authorities. 10/

133. According to the Act establishing it, the National Civil Police shall have the mission of protecting and safeguarding the free exercise of the rights and freedoms of individuals, preventing and combating all types of crimes and maintaining internal peace, tranquillity, order and public security in both urban and rural areas, adhering strictly to respect for human rights. It is to be the only armed police body with national jurisdiction. 11/

134. The parties defined the doctrine of the new force, stating that it would accord with "democratic principles; the concept of public security as a service provided by the State to its citizens, free from all considerations of politics, ideology or social position or any other discrimination; respect for human rights; the effort to prevent crime; and the subordination of the force to the constitutional authorities". They also stipulated that "the National Civil Police shall be a professional body, independent of the armed forces and free from all partisan activity". 12/

135. In accordance with the peace agreements, the National Civil Police Act provides for an organization with a Director-General, an Inspector General, a Deputy Director-General for Operations, and a Deputy Director-General for Management. The Deputy Director-General for Operations has the following central divisions under his control: Public Security; Criminal Investigation; Frontiers; Finance; Arms and Explosives; Protection of Eminent Persons; Environment; and any other divisions which may be established by order of the President of the Republic. The Deputy Director-General for Management has the following divisions under his control: Infrastructure; Data Processing; Administration; Logistics; Planning and Budget; and any other divisions which may be established by order of the President of the Republic (arts. 4, 8, 10, 11 and 22).

136. The Finance Division is under the functional control of the Ministry of Finance; Environment under the Ministry of Agriculture and Livestock; and Criminal Investigation under the Attorney-General of the Republic. The Criminal Investigation Division is of special interest, for under article 193-3 of the Constitution the Attorney-General is responsible for directing the investigation of the offence through a criminal investigation agency. Since the Attorney-General has functional control over the Criminal Investigation Division of the National Civil Police, it is possible to staff the Division with expert policemen and avoid duplication of armed police forces having national jurisdiction, which is prohibited by the Act.

137. The parties also agreed on the establishment of a National Public Security Academy responsible for the selection and training of the personnel of the PNC at all levels, for investigating, studying and publicizing matters relating to the PNC and public security, and for making an annual evaluation of all PNC personnel. 13/

138. The agreements envisage a complex transitional regime with an implementation timetable. The duration of the transition was estimated at 24 months from the arrival of the first intake of basic-level students in the National Public Security Academy, scheduled for 1 May 1992. In accordance with the transitional regime, the PNC will take up the performance of its functions in stages. For the duration of this process it was agreed that the existing National Police should continue to perform public security functions. In addition, while the first senior and executive officers of the PNC are being trained, the Director-General is authorized to create provisional commands, exclusively for the PNC, supported by experts and advisers, under a programme of close international cooperation and supervision coordinated by the United Nations. Lastly, it was decided that in the traditional conflict zones public security would be subject to a special regime determined by the Director-General of the PNC. 14/

139. It was also agreed that personnel who had not participated directly in the armed conflict should be encouraged to join the force, without prejudice to the right of former members of the National Police and former FMLN combatants not to be discriminated against in the selection of personnel. It was specified that former members of the National Police might join the National Public Security Academy, after an evaluation of their conduct by the Director-General of the PNC, under the supervision of COPAZ and subject to verification by the United Nations, provided that they met the admission requirements. The recruitment of former FMLN combatants was made subject to the requirement that they fulfilled the admission criteria and procedures established for them by COPAZ and went through the National Public Security Academy. In addition, it was expressly stipulated that most of the recruits should be selected from among persons who had not participated directly in the armed conflict and that the proportion of former FMLN combatants should be no greater than that of former members of the National Police, and vice versa. It was also agreed that special consideration should be given to the recruitment of women. 15/

140. The structuring and the establishment of the PNC in the manner envisaged in the peace agreements are designed to have a decisive effect in improving the observance and safeguarding of human rights in the country. The very concept of the force as an exclusively civil body, whose first function is to protect and safeguard the free exercise of the rights and freedoms of individuals, restores the proper role of the police in a democratic society. The independence of the PNC from the armed forces is an expression of the new democratic concept of the armed forces and supplants the doctrine which made them responsible for public security, a doctrine which could be used for such constructs as the "internal enemy" and other notions of the so-called "national security" which has been employed to justify countless abuses of human rights in Latin America. The disbanding of the former National Police once the PNC is in place is designed to establish the relationship between the citizens and the new police force on equally new bases of trust. The concept of the PNC as the only armed police force with national jurisdiction enhances the security of individuals, for they will no longer be exposed to measures adopted by various security forces. The responsibility entrusted to the PNC, through the Criminal Investigation Division and under the functional control of the Attorney-General of the Republic, for investigating criminal acts and gathering evidence to identify the perpetrators of such acts ought to offer an

appropriate channel for implementing the proposal made by the parties that the existing impunity of perpetrators should be ended, as well as further increasing the people's confidence that the commission of crimes, and in particular violations of human rights, will not go unpunished.

141. Mr. José María Monterrey was appointed Director-General of the PNC and Mr. José Mario Bolaños, Director of the National Public Security Academy. On 1 September the courses began in the building which had been used for the training of the National Police (CETIPOL). At the time of writing of this report, additional quarters are being prepared to receive new intakes of students.

142. Public security is governed by a transitional regime. Of the former security forces, only the National Police is still in operation, but there are plans to eliminate it two years from the date when the PNC is in place throughout the national territory. 16/ A special transitional police contingent has been set up in the former conflict zones; its members are Academy students under the close supervision of the police component of ONUSAL, in accordance with the special regime introduced by the Director-General of the PNC, and it is known as the Transitional Auxiliary Police (PAT). According to information provided by PAT, the deployment of this police contingent has been well received by the population of the zones and has operated satisfactorily in the 12 PAT stations in place, which cover 80 municipalities.

143. At the time of writing of this report, the first class was about to graduate from the National Public Security Academy, as were the middle and higher levels of the new group of trainees in Puerto Rico.

144. However, the first steps taken in implementation of the Agreements with respect to the police departed in some respects from the agreed terms. Some comments are required on the personnel recruited for the new force. According to the Agreements, the admission of applicants who were former members of the National Police was subject to prior evaluation by the Director-General of the PNC, under supervision by COPAZ and verification by the United Nations. The Independent Expert was told by the Director-General of the PNC that the National Police authorities had not sent the corresponding files early enough in advance for the evaluation to be made without delaying the admission tests. Furthermore, according to official admission figures, the number of students who were former FMLN combatants (498) was greater than the number of former members of the National Police (381), although unverified allegations were received that part of the intake of recruits consisted of former members of the disbanded public security forces who had concealed that affiliation. In addition, effective measures were not taken to encourage women recruits, as had been agreed. 17/

145. The influence of the military on the police has not been entirely eliminated. Two military advisers worked for some time in the National Public Security Academy, but they have now been removed from it. Former members of disbanded security forces other than the National Police were also admitted, despite the fact that the Agreements provide for admission to the PNC of former members of the National Police only. In his report to the General Assembly, the Independent Expert also indicated his concern about the

delicate situation of the Criminal Investigation Division of the PNC at that time. There had been a project to establish a parallel body to the Division, attached to the Office of the Attorney-General of the Republic, to act as a "criminal investigation agency", on the model of the "Commission for the Investigation of Criminal Acts", which is under the control of serving officers of the armed forces and staffed to a large extent by military personnel. Fortunately, the parties, with ONUSAL support, reached an agreement on this subject on 22 December 1992; the agreement comprises a gradual transition process which will incorporate, subject to evaluation, the staff of the current Commission for the Investigation of Criminal Acts and Anti-Narcotics Commission into the Criminal Investigation and Anti-Narcotics Divisions of the PNC.

146. It is essential for the PNC to be established and to function in accordance with the model described in the peace agreements. This is a model of a democratic, modern police force which is an integral part of civil society and not in conflict with it. A police force which safeguards civil rights and protects the lives and property of Salvadorians within the framework of the Constitution and the law. Its emasculation would mean not only the loss of a necessary instrument for the common good but also the virtual repetition of a past in which the public security forces were known within and outside the country to be responsible for grave and systematic violations of human rights. The Independent Expert would strongly emphasize the need to continue to build the new police force along the lines set out in the peace agreements and thus to take full advantage of the opportunity which the country now has to acquire a police force suited to the democratic project which the whole nation has decided to carry out.

3. Judicial system

147. The reports of the Director of the ONUSAL Human Rights Division have repeatedly emphasized the inability of El Salvador's judicial system to ensure due legal process and establish the criminal responsibility of the perpetrators of grave violations of human rights. 18/ During the negotiations, the parties approved reforms of the judicial system which have been only partially implemented, but were designed to make the judiciary more independent and efficient.

148. In the Mexico Agreements of 27 April 1991, the parties agreed on a number of constitutional reforms with a view to: (a) reorganizing the Supreme Court of Justice and introducing a new procedure for the election of its judges by a two-thirds majority of deputies elected to the Legislative Assembly; (b) making an annual allocation from the State budget to the judiciary amounting to not less than 6 per cent of current income; (c) creating the post of a National Counsel for the Defence of Human Rights, whose primary function should be to promote and ensure respect for human rights; and (d) electing the Attorney-General of the Republic, the Chief State Counsel and the National Counsel for the Defence of Human Rights by a two-thirds majority of deputies elected to the Legislative Assembly. Under the same Agreements, matters such as the reform of the National Council of the Judiciary, the Judicial Training School and the career judicial service were referred to secondary legislation. In the Peace Agreement signed at Chapultepec on 16 January 1992, the parties reaffirmed their accord on these matters.

149. The purpose of these reforms was to try to overcome the many shortcomings in the judicial system. The first and most serious was the judiciary's lack of any real independence and autonomy. The determinants of the judicial system could be found in the legal structure of the State itself, which in practice made the judiciary dependent on the other public authorities and thus on the political or social groups represented therein.

150. The dependent status of the judiciary was due to at least two factors, which were sufficient to determine its functioning: the budgetary system and appointments to judicial posts. Its budget depended on political decisions of the Government and the Legislative Assembly. The membership of the Supreme Court of Justice was also determined by a political decision of the Assembly; and, since the Court is not only the highest legal instance but also the administrative head of the judiciary, the performance of the judges and other members of the judiciary was affected by the power which the Court exercised over them.

151. The judiciary is the only one of the three traditional State powers which, under the Constitution, has no part in the final decisions concerning approval of the budget: the Executive prepares the draft budget (art. 167 (3)) and the Legislature approves it and issues it as a decree (art. 131 (8)). This arrangement was important because of the well-known lack of resources available to the judicial system to perform its functions in a worthy and efficient manner. Even worse, the budget allocated to justice represented a proportion of public expenditure (about 2 per cent) comparable to or even lower than the allocations to other public activities which are clearly of less value than the administration of justice in a State governed by the rule of law. In short, the judiciary's budget depended on the executive and legislative organs, and they, historically, had not allocated to the judiciary sufficient resources for the adequate funding of its needs.

152. Prior to the constitutional reform resulting from the Mexico Agreements, posts in the judiciary were filled by the Supreme Court of Justice, whose judges, in turn, were appointed by the Legislative Assembly for a term of five years, at the end of which they could be confirmed or replaced. As the term of all judges of the Court started and ended on the same date and their election did not require a qualified majority, the composition of the Supreme Court depended on the political composition of the Legislative Assembly: when one party gained the parliamentary majority, it could change all the judges and elect those who were loyal to it.

153. All judges of first and second instance, justices of the peace, forensic physicians and employees of the Supreme Court were appointed and removed by the Court. The National Council of the Judiciary was empowered to propose candidates for appointment as judges of courts of first and second instance; however, under the revised law, half of the members of the Council were Supreme Court judges; 19/ hence the powers of the Court over the judicial system were maintained intact.

154. The judiciary thus formed a vertical structure and came under the authority of the Supreme Court of Justice, which was empowered not only to set aside judgements of the lower courts, but also to appoint and remove the judges. In this way, the structural dependence of the justice system was

complete: the membership of the judiciary, as such, was determined by the political composition of the Legislative Assembly, which changed every five years, and the judges individually forfeited their independence because of the control which was exercised over them by the Supreme Court of Justice. To this must be added the fact that, as the body responsible under the Constitution for authorizing lawyers to practise their profession and to suspend or disqualify lawyers and notaries (art. 182 (12)), the Supreme Court was clearly able to restrict their independence.

155. In the framework described, it is easy to find ways of exerting pressure on judges. Whether the judgement will win them friends or make them enemies and whether the consequences will be favourable or unfavourable for their career are considerations which must influence judges when they are making a decision. Much of the time, there is no need for the external factors at work in the judicial system to actually exert pressure. Their widespread presence and their predictable reaction to a particular decision are sufficient to ensure that the judge is anxious not to alienate any of them. The situation is not the fault of the judges, nor could it be altered or remedied by the courageous stand of one among them. The seeds of disruption of justice are sown in the statute regulating the judiciary, which invites the judges to divide their loyalties rather than dedicate all of their energies to their office and duties.

156. Another frequent target of criticism is the lack of efficiency of the justice system, which is slow and unreliable, both because of the practices described and because of the lack of preparation of judicial personnel. Judicial training has been inadequate; in practice, there has been no centre for training judicial personnel and no programmes for developing and improving the professional skills of judges. The State has no body which can develop learned opinions in judicial matters and create a genuine professional awareness.

157. Judges have been poorly remunerated, a circumstance which has eroded their devotion to duty and caused them to spend part of their time exercising other gainful activities. In order to be appointed to some judicial offices, including those of justice of the peace and officer responsible for executing the writ of habeas corpus, a lawyer's qualifications were not necessary. Moreover, the support staff of the courts lacked the requisite training to be able to work efficiently.

158. The judicial reforms decided on in the peace agreements are designed to remedy the foregoing shortcomings in the ways described below.

159. According to the constitutional reform, (art. 172, in fine), "the judiciary shall receive an annual allocation from the State budget of no less than 6 per cent of current income". Under transitional provisions, that goal was to be reached "gradually and proportionally" within a period of no more than four years. The Independent Expert was told by the President of the Supreme Court of Justice that a budget of approximately 3.20 per cent of the total current income of the State had now been reached. This has made it possible to begin a programme for the construction of courthouses, increase investment in data processing and purchase vehicles for the judges.

160. The reform described certainly represents progress towards the independence of the judiciary, whose budget will not be subject to the political will of the executive and legislative branches. None the less, this reform alone cannot eliminate structural dependence from the justice system. If the other factors remain in place, the result will be a judiciary with resources, but without autonomy.

161. The constitutional reform modified the system of electing the judges of the Supreme Court of Justice. Their election remains the prerogative of the Legislative Assembly, but now requires a qualified majority of two thirds. Henceforth, the judges of the Court are to exercise their functions for nine years, a term which gives them greater independence vis-à-vis a Legislative Assembly whose mandate is for only three years. In addition, instead of the judges being elected all at once, one-third of them will be renewed every three years, with the result that the composition of the Court will not be determined by the political composition of the Legislative Assembly as it exists at a given time. Lastly, they are to be elected from a list of candidates drawn up by the National Council of the Judiciary, half of the names being proposed by the associations representing lawyers in El Salvador and comprising candidates representative of the main schools of legal thought. This condition limits the political discretion of the Assembly to select judges and introduces factors of external control, including public opinion, over the election (art. 186). Strictly applied, these new provisions will certainly change things for the better.

162. Another requirement introduced by the constitutional reform was that any person wishing to be a justice of the peace should be a lawyer (art. 180). This has permitted a procedural reform, which, the Independent Expert was told, is about to be adopted, whereby the preparation of criminal cases would become the responsibility of justices of the peace, not of judges of first instance as at present. This reform will increase the number of investigating judges and separate the investigation phase from that of the decision of first instance, which should increase objectivity and expedite matters in the criminal justice system. It should be emphasized, however, that the implementation of the reform should be carefully evaluated, since there is a risk of distorting the role of the justices of the peace.

163. Under the constitutional reform, a person serving as a judge is not allowed to practise as a lawyer or a notary or to hold another public office. Together with the budget reform, this change should mean that judges will devote all of their attention to the performance of their judicial duties.

164. The powers of the Supreme Court of Justice as the administrative apex of the judicial system have been curtailed somewhat. The Court retains the competence to appoint judges, but it must do so from lists of three candidates submitted by the National Council of the Judiciary. It maintains intact, however, its authority to dismiss judges, accept their resignation and grant them leave. This reform is a timid one, and insufficient for overcoming the vertical structure of the judiciary.

165. The Independent Expert must emphasize the unsoundness of a vertical structure in the judicial system which makes the judge administratively subordinate to the very instance which will review his judgements in appeal

proceedings. If the judge is aware that his appointment and, especially, his dismissal depend on the Supreme Court, he will inevitably be subject to the Court's influence, whether that influence is direct or implicit. The independence of the justice system comes about not only through the organic separation of the judiciary from the other branches of State authority, but also through the independence of the individual judges to decide the cases before them on the basis of the pleadings and evidence adduced during the proceedings, according to conviction and conscience and without the intervention of factors external to the case.

166. The Independent Expert received various complaints alleging that the President of the Supreme Court of Justice had pressured a number of judges to take or abstain from taking a particular course of action. When confronted with this in an interview with the Independent Expert, the President of the Court said that, fundamentally, that allegation lacked all basis. He gave the Independent Expert a copy of a circular that had been issued urging the judges not to pay any attention to appeals allegedly made or pressure said to have been exerted in the name of the Supreme Court and to bring any such situation that might arise to the attention of the Office of the President. None the less, he acknowledged that, in some cases, there had been historic circumstances which had compelled him to follow developments in order to protect the judges from political pressure, since the majority of judges were ill-prepared to deal with a particular political environment. He explained that, even in those situations, he merely made suggestions and never attempted to impose anything. The Independent Expert considers that, even in exceptional cases, in particular historic circumstances, the type of situation described bears out his opinion that the potential scope for hierarchical influence over the judge undermines the total independence which his office warrants.

167. Among the matters which the parties decided to refer to secondary legislation was the structure of the National Council of the Judiciary. They agreed that the composition of the Council should guarantee "its independence from the organs of State and from political parties" and that its membership should include "not only judges but also sectors of society not directly connected with the administration of justice". In the Peace Agreement signed at Chapultepec on 16 January 1992 they reaffirmed that, "as already agreed in the Mexico agreements, the composition of the National Council of the Judiciary shall be such as to guarantee its independence from the organs of the State and from political parties ...". In accordance with the New York Agreement, they referred the matter to the National Commission for the Consolidation of Peace (COPAZ) to prepare the corresponding preliminary legislative draft.

168. However, COPAZ, the Independent Expert was informed, was unable to prepare the preliminary draft. The Supreme Court of Justice submitted its own draft and two non-governmental organizations, the Centre for Juridical Studies (CEJ) and the Law Enforcement Study Centre (CESPAD), also prepared preliminary drafts. The important debate on the issue led to the approval of an Act that was adopted by consensus.

169. The new National Council of the Judiciary Act has some positive aspects. First, it specifically defines the Council as an independent body, in accordance with the Peace Agreements. With regard to the Council's composition, it is a good thing that the Act limits the powers which the Legislative Assembly would have if the Constitution was applied directly and that the members of the Council are elected freely, since the only choice is between candidates presented on separate lists. 20/ Unfortunately, the Act did not include the idea put forward in the Agreements that the Council should represent "sectors of society not directly connected with the administration of justice".

170. The Act also contains a dangerous contradiction that may be prejudicial to the concept of the independence of the Council, since it assigns to the Supreme Court of Justice disciplinary power over its members, who may be dismissed, inter alia, for "just cause" (arts. 11 and 49). This is a matter of some concern, since the accumulation of disciplinary powers over judges and lawyers has been used to limit their independence and support the hierarchical nature of the judicial system. If, in addition, the Court had the power to punish members of the National Council of the Judiciary, it is obvious that that structural defect would be further accentuated, especially since the meaning of the term "just cause" is vague. Moreover, if the Council is independent of the Supreme Court of Justice and is appointed by the Legislative Assembly, it is not logical that the Court should be the body competent to dismiss its members. The cause of the problem is probably that the preliminary draft which was submitted to the Legislative Assembly by the Supreme Court of Justice and which appears to have served as a basis for the discussion regarded the National Council of the Judiciary as being "attached to the judiciary". This was not accepted by the Assembly, which did not realize, however, that it had maintained the Court's disciplinary power. That was in conformity with the wording of the draft, but not with that of the Act actually adopted. The Independent Expert raised the problem with COPAZ, which stated, that the Acts adopted under the Peace Agreements in the days before 15 December 1992 had been the subject of decisions adopted in some haste and under pressure because of the date on which the armed conflict was to end (see para. 38 above). The members of COPAZ stated that they were prepared to review the matter and the Independent Expert strongly urges them to do so, since this is a question of genuine importance.

171. In both the Mexico Agreements and the final Peace Agreement, the parties decided that the National Council of the Judiciary would be responsible for operating the Judicial Training School, "whose purpose would be to ensure a steady improvement in the professional training of judges and other judicial officials and of members of the Office of the Attorney-General of the Republic; to investigate the country's judicial problems and promote solutions thereto; and to foster greater bonds of solidarity among members of the judiciary and a coherent overall vision of the function of the judiciary in a democratic State". It was also agreed that the rules for the administration and organization of the School would be such as to ensure its academic independence and its openness to the various schools of legal thought.

172. In the opinion of the Independent Expert, a centre of learning such as the one described is of paramount importance for the strengthening of the judicial system and its consolidation as an autonomous branch of government.

One vital objective which undoubtedly will take time to achieve is the formation of a new judicial ethos. It is essential that every judge and the judiciary as a whole have a coherent overall vision of the function of the judicial system, in a State in which the rule of law prevails, and that the conduct of the judiciary as a whole should adhere exclusively to the rules that can be inferred from that concept. This requires that judicial problems should be the subject of constant thought and discussion and the Judicial Training School as envisaged in the Peace Agreements is the appropriate forum for considering such problems.

173. Another matter relating to the system on which agreement was reached at the peace negotiations was that of the judicial career. It was agreed that the secondary legislation would contain provisions to ensure that admission to the judicial career was based on mechanisms guaranteeing objective selection, equal opportunities for all candidates and the selection of the best-qualified candidates. Such mechanisms will include competitive examinations and attendance at the Judicial Training School. To that end, it is necessary to amend the 1990 Judicial Career Act. The amendment was adopted in December 1992, but, according to the information received by the Indepndent Expert, only in order to comply with the requirement that there should be a new Act by 15 December, it being understood that the debate on the Act would reopen, with more time for discussion, immediately afterwards, and this is what has already begun in COPAZ.

174. The changes to the judicial system established in the Peace Agreements undoubtedly represent an improvement over the previous situation. Nevertheless, in the opinion of the Independent Expert, a good deal more must be done to ensure that some of the problems still present in that system are completely resolved. It is clear that the vertical structure of the administration of justice hampers the intellectual freedom of the judge and the independence of lawyers. This is a problem to which there is no easy short-term solution, since it is connected with the constitutional powers of the Supreme Court of Justice. Secondary legislation may regulate those powers and set certain limits and conditions on their exercise, but it cannot leave them without effect. This is a point that the Salvadorians will have to take into account when they take a sovereign decision to make a further amendment of their Constitution.

B. Special measures to ensure the observance and safeguarding of human rights

175. As has been mentioned, the Peace Agreements contain many provisions designed to enforce and safeguard human rights. Some of these had been conceived as special temporary measures to resolve specific problems raised during the negotiations or to function on a transitional basis as part of the verification of those commitments by the United Nations.

1. United Nations Human Rights Verification Mission

176. The San José Agreement of 26 July 1990 provided for the establishment of the United Nations Human Rights Verification Mission. For administrative reasons, the Human Rights Verfication Mission was incorporated into the

broader United Nations Observer Mission in El Salvador (ONUSAL) as a division of that Mission and is referred to in this report as the ONUSAL Human Rights Division.

177. The Division has broad powers to investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights. The Division can, inter alia, receive communications or complaints; visit any place or establishment freely and without prior notice; hold its meetings freely anywhere in the national territory; interview freely and privately any individual, group of individuals or members of bodies or institutions; collect by any means it deems appropriate such information as it considers relevant; make recommendations to the parties; and report regularly to the Secretary-General of the United Nations and through him to the General Assembly (see A/44/971-S/21541, annex, paras. 13 and 14).

178. Under the San José Agreement, the Human Rights Verification Mission was to take up its duties as of the cessation of the armed conflict (ibid., para. 19). However, at the request of both parties, it began its activities on 26 July 1991, that is, one year after the signing of the San José Agreement and a little more than six months before the cessation of the armed conflict formally entered into force (on 1 February 1992). 21/ This circumstance disrupted its functioning in a climate considerably more violent and militarily polarized than that imagined when agreement was reached on its establishment.

179. The first Director of the Human Rights Division of ONUSAL was the judge Philippe Texier (France), who left his post when the year for which he had agreed to perform such functions expired. Upon completion of his work, Mr. Texier said that, in spite of the achievements made by the Human Rights Division, there continued to be violations of human rights owing to the structural causes that persisted and that it would be a long time before they disappeared. Since October 1992, the Human Rights Division has been headed by the Latin American jurist Mr. Diego García Sayán (Peru).

180. At the time of writing of this report, the Human Rights Division had submitted five reports to the Secretary-General of the United Nations, in which it made a number of recommendations, which will be discussed later in this report.

2. Commission on the Truth

181. Under the Mexico Agreements of 27 April 1991, the parties agreed to establish a Commission on the Truth, to be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the parties. The Secretary-General appointed Mr. Belisario Betancur (Colombia), Mr. Thomas Buergenthal (United States of America) and Mr. Reinaldo Figueredo (Venezuela); Mr. Betancur was elected Chairman of the Commission.

182. The Commission is entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth. To that end, the Commission must take into account:

(a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise;

(b) The need to create confidence in the positive changes that the peace process is promoting and to assist the transition to national reconciliation.

183. Under the Peace Agreement signed at Chapultepec on 16 January 1992, the parties recognized the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized, and to that end referred the issue to the Commission on the Truth for consideration and resolution. This, they expressly stated, would be "without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible". 22/

184. The Commission on the Truth also has a role to play under the National Reconciliation Act of 23 January 1992. That Act provides for an amnesty for all persons involved in political offences, ordinary offences related to political offences or ordinary offences committed by a group of no fewer than 20 persons. The Act, however, does not extend amnesty to persons who, according to the report of the Commission on the Truth, participated in serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth (art. 6).

185. One of the Commission's tasks is to recommend statutory, political or administrative provisions prompted by the results of the investigation that it carries out. Such recommendations can include measures to prevent the repetition of such acts, as well as initiatives to promote national reconciliation.

186. The Commission had broad powers to organize its operation and its activities, the data collection phase of which officially ended on 13 January 1993. The Commission has announced that it will submit its final report containing its recommendations to the parties and the Secretary-General on 11 February 1993. The parties have pledged to implement the Commission's recommendations. It is the responsibility of the Secretary-General to publish the report.

187. The functions of the Commission on the Truth under the aforementioned agreements and the National Reconciliation Act, taken as a whole, correspond to the needs of the peace process and the long-cherished hopes of civilian society. On the one hand, the Commission has the powers to investigate acts of violence of exceptional importance that offend human dignity and to make specific recommendations. On the other, both the Peace Agreement signed at

Chapultepec and the National Reconciliation Act have recognized the Commission's important role in putting an end to impunity. That is why, even in the narrow time-frames and area in which the Commission operates, its work can provide the means whereby society learns the truths which have remained hidden because the ordinary methods have been inadequate to investigate them and whereby the judicial system is able to act in conformity with the imperatives that result from these truths. These are the foundations or the essential requirements on which national reconciliation can be solidly based. Moreover, this must be the beginning of a new legal and political reality in which attacks against human rights and all forms of violence against individuals for political reasons do not go unpunished or uncompensated, but rather elicit a prompt and effective response from the State machinery responsible for investigating the facts, identifying the culprits and meting out the prescribed punishment, as well as redressing the offence. That is why it is essential for the parties to accept, with all their implications, any recommendations that are made by the Commission on the Truth and to ensure their immediate and full implementation, according to the terms that they have pledged to observe.

C. Agreements on the armed forces

188. One of the most prominent measures to remove the causes of human rights violations has been the overhaul of the armed forces through the constitutional reforms provided for in the Mexico Agreements of 27 April 1991 and through the Peace Agreement signed at Chapultepec on 16 January 1992. Compliance with all the agreements on the armed forces is expected to have a positive impact on the effective enjoyment of human rights by Salvadorians. The function of the armed forces is limited to defending the sovereignty of the State and the integrity of its territory. The constitutional reforms, like the agreements on the doctrine and the educational system of the armed forces, underscore the subordination of the armed forces to civilian authority in accordance with principles deriving from the rule of law, the pre-eminence of human dignity and respect for human rights.

189. Contrary to the provisions of the revised Constitution, which assigned a continuing and general role to the armed forces in the maintenance of domestic peace and public safety, the constitutional reforms authorize action in that area by the armed forces only in totally exceptional cases, where the normal means of maintenance have been exhausted, and that only by special decision of the President of the Republic and under the strict supervision of the Legislative Assembly, which may, at any time, order the cessation of such exceptional measures. (art. 168 (12)).

190. In accordance with the new concept of the armed forces, it was agreed that their educational system should be changed, inter alia so that curricula and study programmes would include, "in addition to military and technical subjects, scientific and humanistic studies in order to provide an all-round education which gives students the necessary skills to participate actively in the institutional life of the country and promotes at all times a harmonious relationship with civilian society, as well as their normal activities as members of that society". 23/

191. A process of purging of the armed forces was agreed upon "within the framework of the peace process and with a view to the supreme objective of national reconciliation, based on evaluation of all members of the armed forces by an Ad Hoc Commission". 24/ The results of the work of the Ad Hoc Commission are discussed in another part of this report (see paras. 244-250 below).

192. It was also agreed that there would be a reduction of the armed forces "to a size appropriate ... to the functions assigned to them by the Constitution within the framework of the constitutional reform resulting from the Mexico Agreements". The reduction plan, with the timetable for its execution, has been submitted by the Government to the Secretary-General of the United Nations and the United Nations will monitor its implementation. The Government has announced that the process will be completed by mid-February 1993, that is to say, earlier than scheduled. Related to the matter of reduction is the disbanding of the special units known as "rapid deployment infantry battalions" (BIRIs). At the time of writing of this report, the Bracamonte, Belloso, Atlacatl and Atonal BIRIs had been demobilized. The remaining BIRI (Arce Battalion) is to end with the completion of the process of the reduction of the armed forces. In addition, a decree disbanding the Civil Defence corps has been issued and a new Military Service and Reserves Act has been promulgated, replacing the old system of territorial service and forcible recruitment.

193. Another especially important agreement is the one disbanding all public security forces, which, under the old system, functioned within the organizational structure of the armed forces. The abolition of two of these forces - the National Guard and the Treasury Police - has now officially taken place. The parties stipulated that their members should be incorporated into the army. The third public security force - the National Police - temporarily retains its public security functions during the gradual deployment of the National Civil Police, established under the same Peace Agreements, as noted elsewhere in this report. Special conditions have been laid down by which former officers of the National Police may, after evaluation, be incorporated into the National Civil Police.

194. As part of the Agreements on the armed forces, it was also decided to abolish the National Intelligence Department and to create "a new entity to be called the State Intelligence Agency, which shall be subordinated to civilian authority and come under the direct authority of the President of the Republic". 25/

195. The true scope of the decision taken to implement the Agreements on the abolition of the National Intelligence Department (DNI) and its replacement by the State Intelligence Agency (OIE) is not clear. Although that has officially been done and Mauricio Sandoval has been appointed Director of the new agency, in practice there has been no transfer of duties or facilities from DNI to OIE. The Director informed the Independent Expert that he had not received the files, equipment or other appurtenances of the post he is now taking up, which were said to have been left in the custody of the military authorities. There is also no news of the staff of the disbanded DNI, because none of its former members has asked to be incorporated into the new body, after undergoing the evaluation provided for in the Agreements, 26/ and the

alternative system of compensation mentioned in them has not been applied. 27/ Moreover, a "military intelligence battalion" is said to be reorganizing within the armed forces. Given these circumstances, the thinking in certain quarters is, as the Independent Expert was informed, that the abolition of DNI and the establishment of OIE have been nothing more than a formality under the decrees providing therefor and that the former body continues to operate under other procedures; the new one will still take a long time to get organized and be in a position to carry out its activities.

196. The Peace Agreement signed at Chapultepec envisages important preventive measures to forestall activities by illegal groups that have committed atrocious attacks against human dignity and are known as "death squads". One such measure is the regulation of private security services, whereby it was agreed "to regulate the activities of all those entities, groups or persons who provide security or protection to private individuals, corporations or State institutions, in order to guarantee the transparency of their activities and also their strict subordination to the law and to respect for human rights". 28/ To that end, the parties expressed their agreement with the outline of a preliminary legislative draft, which they referred to the National Commission for the Consolidation of Peace (COPAZ). 29/ The same purpose is served by other points agreed upon in the Peace Agreement, like the proscription of paramilitary bodies and the disbanding of the Civil Defence corps, 30/ and the commitment to "cancellation of licences for private individuals to bear weapons that are for the exclusive use of the armed forces and immediate recall of such weapons". 31/

197. The recall of weapons in the hands of private individuals is pending, and this is a constant and growing danger to the lives and safety of the population; it is well known that military weapons are commonly used in acts of violence attributed by the authorities to common criminals. Putting an end to such a situation should be a priority objective; it should be recognized that, in view of the magnitude of the problem, it is not easy to achieve immediate results. A weapons recall programme such as that needed in El Salvador at the present time requires a great human effort and is very costly. This is another area where international cooperation can serve a useful purpose.

198. The legislation regulating the activities of all the entities, groups or persons who provide private security or protection has not yet been enacted. Likewise, although the Civil Defence and Territorial Service units have been officially disbanded, witnesses have testified that some former members of those bodies continue to bear arms and continue to make arrests by order of the courts (see paras. 81 and 82 above). The situation described indicates that additional efforts must be made to put fully into practice all that was decided in the Peace Agreement signed at Chapultepec on the subject of paramilitary bodies. 32/

199. Although this is not a question expressly dealt with in the Peace Agreements, it should be noted that, according to information received from the Ministry of Defence, a programme for the human rights training of the armed forces was started in 1992 as part of a concerted regional effort under the direction of the Inter-American Institute of Human Rights and with the support of the European Economic Community.

D. Other human rights agreements

200. The Agreements also cover other human rights. With regard to political rights, changes in the electoral system are planned. 33/ Agreements have also been reached on economic, social and cultural rights. 34/

1. Political rights

201. In the Mexico Agreements, the parties agreed to establish a Special Commission, under the authority of the new Supreme Electoral Tribunal, to study a comprehensive reform of the electoral system. However, the then Central Board of Elections prepared draft amendments which it submitted to the Legislative Assembly. The Peace Agreement signed at Chapultepec requested COPAZ to appoint the aforesaid Special Commission to study the Board's preliminary draft amendments to the Electoral Code. COPAZ appointed a Special Electoral Subcomission, which prepared preliminary draft amendments. The new code was unanimously adopted on 8 January 1993 by the parties represented in the Legislative Assembly.

202. The holding of the 1994 elections is an unprecedented development in El Salvador: for the first time, it will be possible for all the political forces and ideological tendencies in the country to compete in an election in a climate of democratic coexistence. The support to be provided for this process and for the Supreme Electoral Tribunal, both domestically and through international cooperation, must be regarded as one of the priorities of the process.

203. The Supreme Electoral Tribunal has requested UNDP to cooperate in preparing a project which would deal with various problems relating to voter identification. A United Nations electoral mission headed by Mr. Horacio Boneo visited the country from 13 to 23 August 1992 and submitted its report on 25 August. In addition, the Tribunal plans to carry out a technical assistance programme for the organization of the forthcoming elections in conjunction with the Centre for Electoral Training and Promotion (CAPEL).

204. The question of political participation by FMLN as envisaged in the Peace Agreement signed at Chapultepec is related to the above issue. 35/ On 30 September 1992, FMLN filed with the Supreme Electoral Tribunal its application for legalization as a political party, which was definitively approved on 14 December 1992.

2. Economic, social and cultural rights

205. In the Peace Agreement signed at Chapultepec, the parties stated: "One of the prerequisites for the democratic reunification of Salvadorian society is the sustained economic and social development of the country. At the same time, reunification of Salvadorian society and a growing degree of social cohesion are indispensable for fostering development. Hence, the set of agreements required to put a definitive end to the armed conflict in El Salvador must include minimum commitments to promote development for the benefit of all sectors of the population". 36/

206. It was agreed to take steps to deal with the agrarian problem and ensure the legal transfer of land to landless peasants and small farmers designated by law as beneficiaries of the agrarian reform. To that end, it was agreed to allocate lands in excess of the constitutional limit of 245 hectares, lands offered for sale to the State and State-owned lands not currently part of a forestry reserve. With regard to the latter, preference was given to "former combatants of both parties who so request voluntarily, are of peasant origin and familiar with farming, and possess no land of any kind". 37/

207. It was also agreed to respect the current land-tenure situation in conflict zones until a satisfactory legal solution for the definitive land-tenure system is arrived at. This commitment included the provision that "except for particularly complex cases, the Government of El Salvador shall legalize the land-tenure situation in conflict zones definitively within six months from the signing of the cese-fire agreement granting, as appropriate, individual or collective title to the land". 38/

208. As has been pointed out elsewhere in this report, implementation of the agreements concerning land is one of the trickiest problems facing the peace process. Complaints have been made against the Government about compliance with the commitments made and against FMLN for occupying land. This issue is indissolubly linked with the causes of the armed conflict that swept the country and must be resolved if social justice is to be done and the country's stability ensured.

209. In his report to the Security Council on 25 November 1992 (S/24833, para. 53) the Secretary-General pointed out that the complexity of the land issue, which had delayed the implementation of the Agreements, arose from two causes: one is inherent in the economic, political and social sensitivity of land questions in countries with predominantly agricultural economies where, as in El Salvador, land is in short supply and unevenly distributed, and where population density is high and increasing rapidly. The second is that the Peace Agreements reflect only in general terms broad understandings that were reached during the negotiations, leaving details to be worked out during the implementation process.

210. On 13 October 1992, the Secretary-General submitted to both parties a proposed solution to the land issue, which they rapidly accepted. The proposal provides that the total number of beneficiaries should not exceed 47,500, consisting of 15,000 ex-combatants from FAES, 7,500 FMLN ex-combatants and approximately 25,000 landholders in the former zones of conflict; the proposal establishes a three-phase programme for the provision of land to ex-combatants and to current landholders and the Government guarantees that current landholders will not be evicted from the properties they hold. At the end of November 1992, the Legislative Assembly adopted a special decree suspending for 60 days all evictions of peasants occupying land they do not own.

211. On 31 October 1992, the land transfer process began officially with the signing by the Government and FMLN, in the presence of ONUSAL, of an agreement for the transfer of two government-owned estates to former FMLN combatants and the current occupiers of the estates: 800 plots were formally handed over on the Guajoyo and El Gran Sasso estates, San Vicente Department; the land

transfer process subsequently continued in Suchitoto. However, a number of additional measures still have to be implemented in order to define individual property rights before the legal transfer and issue of deeds can formally take place.

212. It should be pointed out that the funds currently available would only make it possible to transfer land to 40 per cent of the beneficiaries. A large proportion of the land is privately owned and has to be purchased in cash at market prices; consequently, contributions from international and regional organizations and bilateral donors are essential if the process is to go ahead satisfactorily.

213. It should also be mentioned that the Agricultural Technology Centre is currently running training courses in agricultural production techniques and business management for 390 former armed forces combatants and 194 former FMLN combatants in order to promote their reintegration into the civilian and working life of the country. Furthermore, 2,748 demobilized combatants were given agricultural implements.

214. However, fresh land takeovers in the former conflict zones, some by former FMLN combatants, have created further tension. The former combatants claim that they are merely returning to land they worked before they gathered at the assembly points. In October 1992, intervention by the Archbishop of San Salvador and by ONUSAL averted a clash between new occupiers and a police contingent made up of recently demobilized troops that could have jeopardized the cease-fire. At the beginning of December 1992, members of the Santa Anita cooperative in Usulután complained to ONUSAL that a group of former FMLN combatants was attempting to take over 945 acres which it owned.

215. Although their implementation has been delayed, the processes of verifying the land inventory and transfer are going ahead reasonably well. The draft agrarian code still has to be approved and the legalization of land ownership in the former conflict zones and the transfer of holdings in excess of 245 hectares still have to be completed, as does the overall implementation of the contingency programmes for the reintegration of former FMLN combatants.

216. The agreements reached on this issue also include the establishment of a Forum for Economic and Social Consultation in which representatives of the Government, labour and the business community, will participate on an equal footing for the purpose of working out a set of broad agreements on the economic and social development of the country for the benefit of all its inhabitants. The Forum is an acceptable mechanism and potentially appropriate for the present situation. However, the private sector joined the Forum quite late in relation to the date set in the schedule agreed on by the parties, and the Independent Expert was informed that it has so far reached only procedural agreements. During his second visit to the country, a number of non-governmental organizations told the Independent Expert that the slow start to the activities of the Forum, resulted from the preference of the Government and business leaders for bilateral negotiations and solutions rather than resorting to the Forum; they also expressed their concern about the frustration the social forces in the country might feel because of the slow pace of the Forum's work.

217. The agreements on privatization and on social welfare programmes still have to be implemented. Representatives of various NGOs agreed on the need to promote access by workers to ownership of the privatized companies and to enact anti-monopoly laws. The provision of institutional facilities for private channels of foreign cooperation, to promote the activities of the appropriate international and national NGOs and the adoption of legislative and administrative measures to facilitate direct foreign cooperation, both official and private, is also pending.

218. Emergency assistance plans for the first contingent of demobilized FMLN personnel began with some delay. The partial implementation of emergency programmes for the second contingent began in early October 1992 and for the third contingent in early November 1992. The Government has not yet defined long-term rehabilitation programmes for disabled former combatants, although the short-term programme has begun. The Government drew up medium-term programmes for the reintegration of former combatants into civilian life on the scheduled date, although procedures for their implementation still have to be defined. COPAZ has yet to complete the preparation of a bill to introduce long-term medical-care programmes for disabled former combatants and to guarantee that the disabled are incorporated into the National Reconstruction Plan.

219. The agreements on the conclusion of medium-term programmes also have to be fully implemented in the following areas: meeting demand for loans for the agricultural sector and micro and small enterprises; participation of micro and small enterprises in the loan portfolio of the commercial banking system; the provision of fellowships for education and training; training for former combatants who wish to live in towns; assistance in growing alternative crops for former combatants who wish to live in rural areas; the housing programme; and participation by organizations representing micro and small enterprises, small-scale peasant farmers, cooperatives and the agricultural sector as a whole in formulating the policies of the Agricultural Guarantee Fund, the Financial and Guarantee Fund for Small Enterprises (FIGAPE), the Federation of Credit Banks (FEDECREDITO) and BFA. The lack of funding for the implementation of these agreements continues to be a serious problem. National loan and financial institutions must nevertheless do their utmost to provide loans as soon as possible for former combatants from both parties so that they can set up their own enterprises. Credit and loans must be provided on special terms, in accordance with the provisions of the National Reconstruction Plan.

220. During his second visit to El Salvador, the Independent Expert learned that the National Reconstruction Plan was already catering for 1.8 million people, including former armed forces and FMLN combatants, returnees, displaced persons and others affected by the conflict. He was also told that the National Secretariat for National Reconstruction and FIGAPE had earmarked 68 million colones to finance micro-enterprises set up by former combatants and that the Inter-American Development Bank had estimated the requirements of the National Reconstruction Plan for the period 1993-1997 at US$ 1.3 billion.

IV. IMPLEMENTATION OF EARLIER RECOMMENDATIONS

221. The Independent Expert's mandate also includes investigating how the two parties are implementing the recommendations contained in the Special Representative's final report and those made by the United Nations Observer Mission in El Salvador and by the commissions established in the negotiating process.

A. Recommendations contained in the final report of the Special Representative

222. In his final report (E/CN.4/1992/32), the Special Representative for El Salvador of the Commission on Human Rights called most emphatically on the parties "scrupulously to implement the agreements reached in order to ensure that the complete and lasting reconciliation of all sectors of Salvadorian society is achieved as soon as possible" (E/CN.4/1992/32, para. 141). The Special Representative also specifically recommended to the constitutional authorities of El Salvador:

> "(a) The adoption of measures to prevent any kind of threats and psychological intimidation against certain sectors of the population;
>
> (b) Perseverance with the judicial reform effort and the establishment of an efficient criminal investigation body under the judiciary;
>
> (c) Perseverance in carrying out the agrarian reform programme and other structural reforms needed to improve the population's well-being."

223. In the present report, observations have been made which show that the Special Representative's recommendations have been only partially implemented. Genuinely significant elements of the Peace Agreements, such as the purging of the armed forces, have not been scrupulously complied with, as urged by the Special Representative. This report has described how there continue to be situations in which death threats are made without any action being taken to stop them, because even the mass media are used freely for this purpose (see paras. 64-69 and 104 above). This report has also commented on the state of the judicial system where, although some reforms have been made, they are insufficient to overcome the structural problem affecting the judicial apparatus. With regard to criminal investigation policy, the Independent Expert welcomes the agreement reached on the coordination of the work of the Attorney-General and the PNC and expresses the hope that this will lead to the implementation of the Peace Agreements on this question (see para. 145 above). In addition, the implementation of the agreements proposed by the Secretary-General concerning land is under way and is, according to the accepted interpretation in El Salvador, a step towards compliance with the recommendation made by the Special Representative on this question.

B. Recommendations made by the United Nations Observer Mission in El Salvador

224. The San José Agreement on Human Rights established that the United Nations human rights verification mission in El Salvador could "make recommendations to the Parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider". 39/ The parties, in turn, undertook to "give their earliest consideration to any recommendations made to them by the Mission". 40/

225. However, this unequivocal political commitment has not resulted in the effective implementation of the recommendations made by the United Nations Observer Mission in El Salvador (ONUSAL). In its reports, the Mission reiterated its request to the parties to provide information on the action taken to comply with the recommendations contained therein (A/46/876-S/23580, para. 174; A/46/935-S/24066, para. 57; A/46/955-S/24375, paras. 107 and 108). On 7 January 1992, the Mission wrote to both the parties requesting information on the follow-up to its recommendations. FMLN responded on 27 April 1992. As for the Government, the Independent Expert was informed that the President of the Republic had ordered that top priority should be given to implementing the recommendations and also that assistance should be sought from ONUSAL to that end.

226. The Mission noted that its recommendations have been complied with "in a piecemeal rather than a systematic manner", leading to the solution of individual cases (A/46/955-S/24375, para. 108) rather than to qualitative transformations likely to guarantee a "will of the State expressed in clear guidelines resulting in consistent behaviour" (ibid., para. 112). The Director of the Human Rights Division told the Independent Expert that he was analysing each of the recommendations made to the Government in order to put forward proposals for their implementation and that, in future, he would try to make his recommendations in such a way that there would be no doubt as to how they were to be implemented. The Independent Expert earnestly hopes that this proposal by the Director of the Human Rights Division will be complied with fully because, as he stated in his report to the General Assembly, in the terms reproduced below, there are glaring deficiencies with regard to the implementation of ONUSAL's recommendations.

227. ONUSAL has made repeated recommendations concerning the right to life and to integrity and security of person. In its third report (A/46/876-S/23580, paras. 28 et seq.) it noted that the systematic failure by the Government of El Salvador to implement the rules of domestic and international law requiring the prevention, investigation, trial and punishment of conduct that can be equated with summary or arbitrary executions was an indication of government responsibility, although there were no accusations or evidence that government officials were directly implicated in the deaths in question either by act or by omission. The Mission recommended observance of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162 of 15 December 1989.

228. In his fifth report (A/46/955-S/24375, paras. 90 and 92), the Director of the ONUSAL Human Rights Division recommended that the National Police

should be provided with the necessary material resources to carry out its functions and to ensure that it maintains professional standards in carrying out proper investigations. It recommended that judges should use the powers of investigation accorded under the law and improve coordination with the National Police. It also considered it essential that the autonomy and independence of the Public Prosecutor's Office should be strengthened and, to that end, drew attention to the United Nations Guidelines on the Role of Prosecutors and, in particular, those concerning prosecutors in criminal cases.

229. In this connection, it recommended that prosecutors should play an active role in initiating proceedings and investigating crimes and that the Attorney-General of the Republic should use all the powers available to him under the judicial system, including that of appointing special commissions to clear up certain cases, as envisaged in article 193 (7) of the Constitution. It also recommended that a register of victims of deaths from other than natural causes might be established.

230. The same fifth report, however, expresses concern at the "lack of any institutional response with regard to the protection of the right to life and to integrity and security of person. No significant progress has been made in the systematic investigation of attempts on human life ..." (ibid., para. 110).

231. With regard to death threats, the Director of the ONUSAL Human Rights Division emphasized the need to provide effective protection for the victims of death threats and to implement measures to halt such practices, such as those established by the Principles endorsed by the General Assembly in its resolution 44/162 of 15 December 1989. In particular, he recommended that measures should be taken to identify the authors of flyers signed by apparently clandestine organizations and to adopt regulations prohibiting the radio or television broadcasting of threatening messages, without prejudicing freedom of the press (ibid., para. 94). These recommendations have yet to be implemented.

232. ONUSAL recommended that simple, flexible mechanisms should be set up to enable persons complaining of enforced disappearances to ascertain the whereabouts of the person concerned quickly. It urged the adoption of measures to eliminate the practice of abductions (ibid., paras. 95 and 96).

233. Concerning torture and other cruel, inhuman or degrading treatment or punishment, ONUSAL recommended that in all verified cases of such abuses legal proceedings should be instituted to investigate the facts and to punish the perpetrators (ibid., para. 97).

234. It observed that "it cannot be claimed that there is at present any systematic practice involving torture, enforced disappearances or abductions. But this positive trend by no means indicates the firm and definitive consolidation of a State ruled by law", since "illegal and arbitrary detention continues to be practised" and "cruel, inhuman or degrading treatment or punishments are still applied" (ibid., para. 113).

235. In his reports, the Director of the ONUSAL Human Rights Division also made many recommendations concerning due process of law, especially in criminal cases, which the Independent Expert has been told have yet to be implemented to any significant degree:

(a) He recommended that judges of first instance should personally conduct the investigations in cases involving violations of the right to life and, in general, in all cases that have given rise to serious social unrest. In cases of violent or suspicious deaths, he recommended that the judge must make an immediate visual inspection, the body must be examined and a thorough autopsy must be performed (ibid., para. 90);

(b) He recommended that judges should invalidate statements made in an atmosphere of intimidation or under any form of coercion. He also recommended that they should exercise more rigorous supervision over places of administrative detention, through regular visits and inspection of the records (A/46/935-S/24066, paras. 48 and 49);

(c) He recommended that the prohibition of incommunicado detention should be scrupulously respected and that the right of any arrested or detained person to have access to counsel immediately and in all cases within 48 hours of his arrest or detention should be guaranteed. He also indicated that a special effort should be made to train public defenders (ibid., paras. 50 and 51);

(d) He recommended that the police should hold persons in administrative detention for a maximum of 72 hours only where the gravity of the charge and the difficulties of the investigation made that strictly necessary. He likewise recommended that judges should use the maximum term of 72 hours for their investigations (before deciding whether to commit the accused to pre-trial detention or to release him) only where that was strictly necessary and that they should order a person's pre-trial detention only where such detention was necessary to ensure his presence at the trial or to prevent any obstacles being placed in the way of the investigation (ibid., paras. 49 and 52);

(e) He recommended that judges should observe fully the time-limits prescribed by law for concluding the pre-trial proceedings in criminal cases and should ensure that those proceedings in no case exceeded what might be considered a reasonable period. The time-limits prescribed for the trial itself, from its commencement to the rendering of the judgement and notification of a final sentence, were also to be respected (ibid., para. 53);

(f) He recommended that the autonomy and independence of the Public Prosecutor's Office should be strengthened. Prosecutors should play an active role in initiating proceedings and investigating crimes. The Attorney-General of the Republic should use all the powers available to him under the judicial system, including that of appointing special commissions, which could be useful for clearing up important cases (ibid., para. 47).

236. The Ministry of Justice informed the Independent Expert that, pursuant to a pre-existing Ministry policy not directly connected with ONUSAL recommendations, a set of 20 preliminary legislative drafts on the guarantees

to which prisoners are entitled during criminal proceedings had been prepared as part of the programme of "technical judicial support for legal reform". The preliminary drafts have been submitted to the Legislative Assembly, but only the Legal Aid and Public Defenders Act and the reform doing away with automatic review by a higher court, whose purpose is to speed up the proceedings, have been adopted. Other reforms, such as that invalidating extrajudicial confession as evidence in criminal proceedings and those on the abolition of presumption of guilt and the decriminalization of theft and fraud among close relatives, are still pending. According to the Ministry of Justice, the approval of the set of planned reforms has come up against opposition by public opinion, which is irritated by the increase in crime.

237. ONUSAL also made a number of recommendations involving legislative reforms:

(a) It recommended that a special law to establish the civil status of undocumented persons affected by the conflict should be drafted and should include provisions making it easier to obtain personal identity cards (A/46/876-S/23580, para. 168);

(b) It recommended legislative reform to invalidate extrajudicial confessions as evidence (A/46/935-S/24066, para. 48);

(c) It recommended legislative reform to reduce the maximum period of administrative detention (ibid., para. 49);

(d) It recommended legislative reform to incorporate explicitly in the Code of Criminal Procedure the guarantee that an accused can communicate immediately with his family, legal counsel and humanitarian organizations (ibid., para. 52);

(e) It recommended amendment of the legislation governing release from custody (ibid.).

238. On 24 March and 1 April 1992 respectively, two special laws were enacted: the Special Transitional Act Establishing the Civil Status of Undocumented Persons Affected by the Conflict (Decree No. 205) and amendments to the Act on the Replacement of Registers and Entries in the Civil Registry (Decree No. 204). These laws implemented the ONUSAL recommendation on personal documentation and identity documents, a development which was welcomed in the fifth report of the Director of the Human Rights Division (A/46/955-S/24375, para. 102). The Ministry of the Interior informed the Independent Expert that the implementation of such measures had so far made it possible to solve the problem of identifying about 300,000 persons. A total of 1,178 birth registers and 293,810 birth entries have been reinstated. A total of 53,764 entries have been made and 18,766 identity cards and 6,199 identity cards for minors issued.

239. The Ministry of Justice informed the Independent Expert that, pursuant to the policy referred to in paragraph 236, it had completed a preliminary bill invalidating extrajudicial confessions as evidence. Approval of the bill is

pending, although, in the opinion of the Minister of Justice, it is probably no longer necessary, as the problem of extrajudicial confessions has been settled through the adoption of the Legal Aid and Public Defenders Act.

240. In the course of a simultaneous inspection by ONUSAL of numerous administrative detention centres known as "bartolinas", the Human Rights Division noted several situations that jeopardized human rights. For this reason, the Division formed a working group to act in close cooperation with senior National Police officials in establishing formulas for eliminating the shortcomings identified. Thus new rules or procedure were approved for arrests for minor offences, and their implementation has, at least initially, led to a considerable reduction in violations of human rights connected with arbitrary arrest, according to information received by the Independent Expert from the Director of the Human Rights Division.

241. With regard to international humanitarian law, ONUSAL has made a variety of recommendations, which were the subject of comments in the report submitted by the Independent Expert to the General Assembly but need not be reproduced at present since the armed conflict has ended once and for all (para. 72).

C. Recommendations made by the commissions established in the negotiation process

1. National Commission for the Consolidation of Peace

242. Among the commissions established under the Peace Agreements, that which has been given the greatest number of responsibilities is the National Commission for the Consolidation of Peace (COPAZ). This Commission is a supervisory body and a means whereby civilian society can participate in the process of change resulting from the negotiations. 41/ It is composed of two representatives of the Government, one of whom is a member of the armed forces, two representatives of FMLN, and one from each of the political parties or coalitions represented in the Legislative Assembly. The Archbishop of San Salvador and an ONUSAL delegate participate as observers. The parties have undertaken to implement its recommendations.

243. During most of 1992, the functioning of COPAZ was impeded by infrastructural shortcomings and by a certain tendency on the part of the Government and FMLN to reach agreements independently. Nevertheless, since the last few months of 1992, COPAZ has been fully operational, especially in the preparation of various preliminary drafts of legislation, among which should be mentioned the Electoral Code Bill and the Military Jurisdiction Organization Bill. The Independent Expert received from some members of COPAZ the complaint that, despite the undertaking to implement the Commission's recommendations, the Legislative Assembly has amended several bills approved by COPAZ.

2. Ad Hoc Commission

244. The purging of the armed forces was entrusted to an Ad Hoc Commission, appointed by the Secretary-General in consultation with the parties and responsible for evaluating the officer corps of the armed forces. The Commission was composed of Reynaldo Galindo Pohl, Abraham Rodríguez and

Eduardo Molina Olivares, plus two officers appointed by the President of the Republic as observers of the Commission's deliberations. The Commission had three months in which to submit its report and conclusions, which could "include the change of activity and, where appropriate, the retirement of the personnel evaluated". After requesting an extension of a further month, the Commission delivered its report, which remained confidential, to the President of the Republic and the Secretary-General on 22 September 1992. As agreed, the Government had one month, from that date, in which to take the administrative decisions corresponding to the Commission's conclusions and a further month to put them into practice. However, as already stated in the present report (para. 38), when the dismantling of the military structure of FMLN did not occur on the date scheduled under the Agreements (31 October 1992), the Government also left in suspense action on several matters concerning the armed forces, including the purging. Among the arrangements that had to be made in order to end the armed conflict was the timing of certain events, the most important of which were: (a) Administrative decisions required in order to implement the recommendations of the Ad Hoc Commission (29 November); (b) disbandment of the military structure of FMLN (15 December); and (c) implementation of the Commission's recommendations (31 December).

245. Since the content of the report of the Ad Hoc Commission was known only to the President of the Republic and the Secretary-General, the latter's function as regards verification of implementation of the recommendations is of crucial importance. The Secretary-General informed the Security Council on 23 December 1992 that the administrative decisions on implementation of the recommendations of the Ad Hoc Commission had been submitted punctually by the Government (S/25006, para. 3 (d)).

246. Nevertheless, on 9 January 1993, the Secretary-General addressed a further communication to the Security Council informing it of the shortcomings noted in implementation of the Commission's recommendations by the agreed date (S/25078). In its report, the Commission recommended the transfer of 26 officers and the retirement of 76. The Government's action, according to a communication dated 1 January 1993 and addressed to the Secretary-General relating to those cases, may be summarized as follows:

(a) Of the 26 officers mentioned, 25 were transferred and the other was retired;

(b) Twenty-three officers were retired;

(c) Thirty-eight officers were placed on availability states (a kind of leave with pay), and their retirement procedures will be completed within a maximum period of six months;

(d) One officer was authorized to remain on active service until he retired on 1 March 1993;

(e) Seven officers were appointed as military attaches in the foreign service;

(f) In connection with the remaining eight officers, it was announced that the appropriate steps would be taken during "the period of transition", i.e. during the remainder of the mandate of the President of the Republic.

247. The Secretary-General, making a broad analysis of all these decisions, reached the conclusion that the action taken on the first four categories mentioned was consistent with the recommendations of the Ad Hoc Commission. As to the measures decided on concerning the other 15 officers, however, he stated that the recommendations had not been implemented and consequently the measures were not compatible with the Peace Agreement. The Secretary-General has requested the President of the Republic to adopt measures as soon as possible to regularize the situation of the 15 officers concerning whom the recommendations of the Ad Hoc Commission have not yet been fully implemented.

248. In his report to the General Assembly, the Independent Expert stated: "The implementation of the conclusions of the Ad Hoc Commission according to the agreed conclusions is crucial for testing whether the peace process has instituted genuine change in Salvadorian society. Conversely, a failure to fully observe the prescribed requirements might introduce a degree of scepticism and discouragement regarding the true subordination of the armed forces to civilian authority and the real scope of the Peace Agreements" (A/47/596, para. 200).

249. This is actually what has happened. The fact that all of what was agreed and moreover, ratified before the Secretary-General has not been carried out is an indication that there may still be lingering tendencies in the armed forces to impose their views on the civilian authorities and that the structural change required by society for full consolidation of an appropriate institutional framework for full safeguards of human rights has not yet been completed. The symptoms lie not only in the fact that the results defined by the Ad Hoc Commission have not been achieved, but also in the whole process which preceded the decision of 1 January, in which there were signs of efforts by the Government to make a number of exceptions to the Commission's recommendations. President Cristiani, for his part, after the date on which he was required to execute the conclusions of the Ad Hoc Commission, criticized the Commission's action since, in his view, the rights of the officers concerned had not been duly respected. The Minister of Defence pointed out, again in public, that the Commission had based its views on NGO sources biased against the armed forces.

250. The fact that the purging of the armed forces has not taken place as stipulated in the Peace Agreements and as proposed by the Government to the Secretary-General is a sensitive issue, which denotes the difficulty of putting into practice the new concept of the armed forces deriving from the constitutional reform and indicates that the process is still at a delicate stage, that it has not completely stabilized and that it is subject to vicissitudes which raise questions about its consolidation.

3. Other commissions

251. The Independent Expert has no further data with which to evaluate the activity of other commissions established under the Peace Agreements. The Commission on the Truth, with the agreement of the parties, will submit its

report slightly later than scheduled so that the Independent Expert may transmit his report to the Commission on Human Rights. Its report will undoubtedly involve matters of exceptional importance, concerning developments of particular seriousness for society which will have to be dealt with with extreme scrupulousness, entailing calm acceptance of the situations highlighted by the Commission, and punctual implementation of its recommendations. The Forum for Economic and Social Consultation has not, for its part, managed to adopt any decisions beyond approval of its rules of procedure and other procedural matters.

V. CONCLUSIONS

252. The Peace Agreements are the result of a massive effort by the parties to reach an understanding, an effort that also expressed a profound national aspiration for peace and justice. The form and content of the Agreements are geared not only to ending the armed conflict by political means, but also to the national enterprise of building a new and more democratic society, imbued with a spirit of solidarity, in which untrammelled respect for human rights is a fundamental means of State action. The task was not simply to end a war, but to eliminate its causes. The nation is thus offered an extraordinary opportunity for progress. In order to take full advantage of this opportunity, it is imperative that the will which led the parties to reach an understanding, and Salvadorian society to encourage them in that objective, should be sustained throughout the process of implementation of the Agreements.

A. Human rights situation in El Salvador

253. The cessation of hostilities itself eliminates an important source of violations of human dignity and establishes a climate more propitious to coexistence and mutual respect for the rights of individuals. In addition, a climate of peace is bound to be more conducive to the normal functioning of economic activities, and must provide better opportunities for realizing economic, social and cultural rights.

254. Moreover, the peace agreements have provided El Salvador with a model of democratic society designed by consensus, with which the changes agreed to during the negotiations must seek to conform. The essential component of that model is the observance and safeguarding of the human rights of all Salvadorians. This state of affairs, too, offers positive prospects.

255. However, the ending of the conflict does not automatically mean the establishment of a climate in which human rights are fully observed and safeguarded, especially when offences against those rights continue to be recorded, albeit to a lesser extent, and it is a well-known fact that the resources available to civilian society with which to combat them are still limited.

256. There are positive signs. The number of attempts on human life originating from the practice of extrajudicial, summary or arbitrary execution does not appear to have been high in 1992, although there does appear to have been a significant increase in the number of homicides attributed to persons unknown or common criminals. Nor has there been any sign of the practice of

enforced or involuntary disappearance. Although the practice of torture or other ill-treatment of detainees has not been completely eliminated, the cases recorded cannot be identified as forming part of a systematic policy. Arbitrary arrests continued to be common in 1992, especially for minor offences, but at the end of the year and with the intervention of ONUSAL, possible signs of progress began to be noted.

257. In other areas, however, less progress has been made. As has already been emphasized, the structural deficiencies in the judicial system are both a source of violation of the right to due process and an obstacle to the proper safeguarding of human rights. Both in structural terms and in the light of the shortcomings pointed out by the Secretary-General in pursuance of the Ad Hoc Commission's recommendations, what may be regarded as signs of weakness are apparent in the transition towards the new conception of the armed forces arising from the Peace Agreements, especially with regard to their full subordination to the civilian authorities emerging from the democratic constitutional regime. In addition, the public cult of violence has not been overcome, anonymous publications threatening persons and institutions have continued, and the agreements reached on economic, social and cultural rights in the peace process are only just beginning to have an affect. Significant progress in this field in the shortest possible time is imperative if justice and social stability are to be secured.

258. The current situation in El Salvador thus lies between two extremes. On the one hand, progress is apparent in the realization of human rights. On the other, this progress has patently occurred within a particular framework, where there are signs of fragility and instability indicating that there is not yet a new, firmly established situation in which such progress has been irreversibly entrenched, especially against the time when ONUSAL's mandate comes to an end. There is a particular question about the actual subordination of the armed forces to civilian authority in the light of what has happened in the case of the purging of the armed forces, as described above. The punctual implementation of the recommendations of the Ad Hoc Commission was a gauge of the solidity of the process; the fact that there is no such solidity gives rise to disturbing doubts in this area. A similar test, which will have to be taken by both parties, will be the report of the Commission on the Truth and implementation of its recommendations. Putting them into practice will be an indication that society has assimilated the changes decided on during the peace process and is preparing to assert itself strongly in a new stage. Failure in this area would constitute a further expression of discouragement and cast further doubt on prospects for human rights in El Salvador.

B. Effects of implementation of the Peace Agreements on effective enjoyment of human rights

259. Implementation of the Peace Agreements presupposes the creation or improvement of measures to ensure compliance by the Salvadorian State with its duty to observe and safeguard human rights. Implementation according to the terms agreed will provide the State with a more appropriate structure with which to ensure effective enjoyment of those rights, and will eliminate some of the causes which in the past have most frequently led to violations.

260. The Office of the National Counsel for the Defence of Human Rights is called upon to play a central role in the promotion and defence of those rights in the future. Priority must be given to supporting and strengthening it at the levels of domestic action and of international cooperation.

261. The National Civil Police is another of the pillars of the Agreements which bolsters the hope that progress will be made in respect for and safeguarding of human rights. It is an institution conceived in terms of a truly democratic standard: an exclusively civilian body, separate from the armed forces, whose first function is to protect and safeguard the free exercise of the rights and freedoms of individuals. The National Civil Police must not stray from that notion of a democratic, modern police force, integrated in civilian society, rather than engaged in a confrontation with that society.

262. The initial organization of the new body reveals some incompatibilities with the contents of the Peace Agreements. In addition to the delay in the schedule for implementation, it has been noted that evaluation of candidates for entry from the National Police have not been brought fully into line with the agreements; nor has the military influence in the police sector been fully overcome.

263. The reforms of the judicial system adopted in the Peace Agreements were directed towards strengthening the system in order to improve its independence and efficiency, which had been called into question through its incapacity to guarantee due process of law and to determine the liability of persons guilty of serious human rights violations. Some of those reforms are bound to exert a positive influence, examples being the reorganization of the Supreme Court of Justice and the new method for electing Supreme Court judges by a majority of two thirds of the Legislative Assembly, and for electing the Attorney-General of the Republic, the Chief State Counsel and the National Counsel for the Defence of Human Rights. The same may be said of the annual allocation to the judiciary of a proportion of the State budget of not less than 6 per cent of current income.

264. Other reforms, originating from the secondary legislation to which they were consigned by the parties, offer still uncertain prospects. The new National Council of the Judiciary Act contains contradictions in that it defines the Council as an independent body, as provided for in the Peace Agreements, but at the same time makes its members liable to dismissal by the Supreme Court of Justice for reasons which include "just cause", thus robbing the judiciary's proclaimed independence of genuine substance. This contradiction could be the result of the somewhat precipitate manner in which the law was enacted and would thus be open to rectification, as the Independent Expert earnestly hopes. In addition, the reform of the Judicial Career Act, which was formally approved before 15 December 1992, is open to further discussion by the Legislative Assembly. These are issues of paramount importance in ensuring that the judicial system as such and each individual judge enjoy the independence that is required in a State governed by the rule of law.

265. To date, the reforms have not been sufficient to overcome the verticality which is a structural defect of the Salvadorian judicial system. Appointment

and dismissal of judges, authorization to practise as a lawyer and disqualification therefrom are within the competence of the Supreme Court of Justice. The vertical structure of the administration of justice adversely affects the intellectual freedom of the judge and the independence of lawyers.

266. The reform of the armed forces which is to result from the implementation of the Peace Agreements must prevent human rights violations in the future. The constitutional reforms, as well as the agreements reached regarding the doctrine and educational system of the armed forces, stress the subordination of the institution to the civilian authority, within the framework of the principles flowing from the rule of law, the pre-eminence of human dignity and respect for human rights. This is an extremely sensitive issue, since it presupposes a rapid transition by the armed forces to the new model of a democratic society that has emerged from the Agreements. Attention has been drawn in this report to the concern which this issue is currently arousing, since implementation of what has been agreed on in this area will be decisive for the credibility of the process.

C. Implementation of previous recommendations

267. The last report of the Special Representative contained only recommendations addressed to the constitutional authorities of El Salvador, which basically remain to be implemented.

268. ONUSAL has directed the bulk of its recommendations to the Government, and for the most part they have not been heeded. However, the Independent Expert has been informed that the President of the Republic has ordered priority to be given to implementation of those recommendations and that the Government has requested ONUSAL's assistance to that end. The Human Rights Division is undertaking an analysis of each of the recommendations made to the Government in order to make proposals for their execution and will, in future, endeavour to make its recommendations in such a way that there can be no doubt about the means of putting them into practice. Before termination of the armed conflict, FMLN, too, was the recipient of several ONUSAL recommendations on international humanitarian law which, generally speaking, were not put into effect.

VI. RECOMMENDATIONS

269. The Government should take maximum advantage of the presence of the ONUSAL Human Rights Division in El Salvador. Its deployment is unprecedented in the history of the international protection of human rights and has brought together highly trained professionals who are in a position to provide the Government with immediate assistance, thereby enabling it to make substantial progress in the observance and safeguarding of human rights.

270. As just indicated, ONUSAL has made a large number of recommendations on subjects directly concerning the observance and safeguarding of human rights. An immediate recommendation of the Independent Expert is, precisely, that those recommendations should be given the earliest possible consideration, as called for in the San José Agreement on Human Rights. 42/

271. The same may be said of the recommendations by the commissions originating from the Peace Agreements, whose implementation has been the subject of an express undertaking by the parties. In particular, implementation of the recommendations of the Ad Hoc Commission on the purging of the armed forces which have not yet been executed is crucial in order to demonstrate the strength of the transition towards the new concept of the armed forces as defined in the peace process. In the same connection, both the Government and FMLN must prepare to implement with extreme scrupulousness, as they have undertaken to do, the recommendations of a legal, political or administrative nature which, pursuant to its mandate, the Commission on the Truth makes when it submits its final report to them; this will take place very shortly after submission of this report.

272. The Independent Expert is also obliged to reiterate his concern at the developments mentioned by the Secretary-General in the report submitted to the Security Council on 29 January 1993, which records FMLN's failure to fulfil its undertaking completely to destroy all its weapons by that date. He recommends with all possible emphasis that the situation calls for the immediate destruction of those weapons.

273. The strengthening of, and support for, the Office of the National Counsel for the Defence of Human Rights should be immediate goals. In order to achieve them, the material, technical and human resources set aside by the State for carrying out its tasks under the Constitution must be concentrated on the Office of the National Counsel. The Office itself must determine which problems it should tackle as a matter of priority, on the basis of the San José Agreement and the recommendations made by ONUSAL. Bearing in mind its constitutional powers and the experience gained by similar entities in other countries, the Office must determine the types of action it wishes to take, in the light of both the situation in El Salvador and its own relationship with the governmental and non-governmental sectors. Through international cooperation, the Office of the National Counsel must be provided with the means of holding one or several seminars in the immediate future focusing on the relevant issues, with assistance from persons with expert knowledge of the issues. At least initially, it would also be helpful if one of the experts could act as a full-time consultant to the Office of the National Counsel.

274. The National Civil Police (PNC) must be set up and developed in accordance with the model that resulted from the Peace Agreements, as a new force, with a new doctrine, separate from the armed forces. Great care must be taken to ensure that individuals from the armed forces or the former public security forces that were disbanded are not involved in the education of members of PNC and do not become PNC officers. The PNC Criminal Investigation Division must be retained, as a skilled body, under the functional control of the Attorney-General of the Republic, for investigating criminal acts.

275. The Independent Expert believes that the separation between the administrative functions of the judicial system and the functions proper of the courts is both beneficial and necessary in order to guarantee the full independence of judges and lawyers. The current system, in which the functions in question are concentrated vertically within the Supreme Court of Justice, should be the subject of a careful review. This is a sensitive

issue, which has its roots in a number of provisions of the Constitution and which Salvadorians will have to evaluate when they take a sovereign decision to carry out a further reform of their Constitution.

276. In any event, the approved text of the National Council of the Judiciary Act should be revised so as to bring the Council's institutional regime into line with its status as an independent body, which the Act itself confers on the Council, and to "guarantee its independence from the organs of State and from political parties", as agreed in the peace negotiations.

277. Furthermore, the revision of the Judicial Career Act that is eventually approved must establish mechanisms which ensure, in conformity with the Peace Agreements, that the conditions for admission to the judicial career include passing competitive examinations and attending the Judicial Training School, and ensure objective selection, equal opportunities for all candidates and the selection of the best-qualified candidates.

278. The unmet needs of the majority of Salvadorians regarding economic, social and cultural rights must be satisfied. In this connection, execution of the Peace Agreements provides initial bases for action; their execution must be extended, with regard to the economic and social programme agreed on and the effective functioning of the Economic and Social Forum as an appropriate mechanism for consultation in this area.

279. The peace process in El Salvador needs greater support from the international community through the National Reconstruction Plan or any other appropriate means. For various reasons and motives, the international community was interested in seeing an end to the armed conflict in El Salvador. That interest should now be redoubled in order to contribute to the eradication of the causes that gave rise to the conflict.

280. The international community must also continue to follow closely the human rights situation in El Salvador. Although there has been progress, it is still too early to say that a new, stable and irreversible situation has been achieved, representing a substantial and lasting improvement in the status of human rights. As already stated and reiterated, what has happened to the recommendations of the Ad Hoc Commission raises doubts whether old military concepts and practices, which were imposed on whatever had been decided by the civilian authorities, have genuinely been superseded. The judicial structure is still very deficient. The report of the Commission on the Truth and the reaction to it are still not known; in view of the above-mentioned factors, particular care will have to be taken with action on its recommendations. In that context, it does not appear advisable to introduce changes which may in any way weaken the support and vigilance which the international community is extending to the transition process; the progress achieved would run the risk of melting away, especially after the ONUSAL mandate has come to an end.

281. To sum up, if lasting, substantial and irreversible progress is to be made in the observance and safeguarding of human rights, the model for Salvadorian society developed during the peace negotiations must be brought into being. The implementation of the Agreements is not only an obligation involving the honour of the parties, but the very means of achieving such a

society. The Government and FMLN embarked on the negotiations as military adversaries and emerged from them with a joint achievement on a historic scale. It is in the best interests of both parties to foster, preserve and cultivate that achievement. The parties must therefore endeavour not only to implement the Agreement scrupulously but also to tackle the difficulties that arise in the peace process with an open mind and in good faith.

Notes

1/ The Salvadorian Constitution requires that its amendment should be approved by the Legislative Assembly and ratified by the Assembly elected for the following term (art. 248).

2/ What was agreed was departed from on a few points. These include the composition of the Supreme Electoral Tribunal and the inclusion of a provision relating to membership of the National Council of the Judiciary, which the parties had agreed to consign to secondary legislation (see paras. 147-174).

3/ Peace Agreement signed at Chapultepec (A/46/864-S/23501), final provision.

4/ "... for the purposes of the present political agreement, 'human rights' shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States" (see A/44/971-S/21541, annex, preamble).

5/ Constitution of the Republic, art. 194.

6/ "For the purposes of this law, human rights shall be understood to mean civil and political rights, economic, social and cultural rights and third-generation rights envisaged in the Constitution, Acts and treaties in force, and in the declarations and principles adopted by the United Nations or the Organization of American States" (art. 2).

7/ Ibid., art. 10.

8/ Fourth report of the Director of the Human Rights Division (A/46/935-S/24066, annex, para. 4).

9/ Constitution of the Republic, art. 194 (10) and (11).

10/ Ibid., art. 167 (17).

11/ Ibid., art. 1.

12/ Peace Agreement signed at Chapultepec (A/46/864-S/23501), chap. II, 2, A and B.

13/ Ibid., chap. II, 5, A.

14/ Ibid., chap. II, 7, B.

15/ Ibid., chap. II, 7, D.

16/ Ibid., chap. IX, 3, 3.24.

17/ Ibid., chap. II, 7, D, b.

18/ See A/46/955-S/24375 (paras. 36 et seq.); A/46/935-S/24066 (paras. 19 et seq.); A/46/876-S/23580 (paras. 31 and 73 et seq.).

19/ In accordance with the now amended National Council of the Judiciary Act, the Council had 10 members, 5 of whom were Supreme Court judges, 3 representatives of the Federation of Lawyers and 2 lawyers elected by the law faculties of universities in El Salvador.

20/ A free election in the Assembly, even by a two-thirds majority, would almost inevitably lead to parliamentary decisions for the "sharing" of posts. The system chosen under the recently adopted Act involves membership of the Council for representatives of different origins. The system is based on a list of candidates from among whom the Legislative Assembly has to choose: two lawyers, each to be chosen from one of two lists prepared by the Supreme Court of Justice; a judge of second instance and a judge of first instance, chosen from among the six most senior judges at the level in question; three lawyers elected by direct, equal and secret ballot by the country's lawyers; a lecturer in law nominated by the University of El Salvador; two lecturers in law nominated by the private universities; and a member of the Public Prosecutor's Department chosen from among the persons nominated by the Attorney-General, the Chief State Counsel, and the Counsel for the Defence of Human Rights.

21/ Peace Agreement signed at Chapultepec (A/46/864-S/23501), chap. VII, para. 2.

22/ Ibid., chap. I, 5.

23/ Ibid., chap. I, 2, C.

24/ Ibid., chap. I, 3, introductory part.

25/ Ibid., chap. I, 7, A.

26/ Ibid., chap. I, 7, F.

27/ Ibid., chap. I, 7, E.

28/ Ibid., chap. I, 10, D, introductory part.

29/ Ibid., annex I.

30/ Ibid., chap. I, 10, A and B.

31/ Ibid., chap. I, 12, E.

32/ Ibid., chap. I, 10.

33/ Mexico Agreements: amendments to articles 208 and 209 of the Constitution; agreement elaborating on the constitutional reform, B; Peace Agreement signed at Chapultepec (A/46/864-S/23501), chap. IV.

34/ New York Agreement, VII; Peace Agreement signed at Chapultepec (A/46/864-S/23501), chap. V.

35/ Peace Agreement signed at Chapultepec, chap. VI.

36/ Ibid., chap. V, 1.

37/ Ibid., chap. V, 2, B.

38/ Ibid., chap. V, 3, E.

39/ San José Agreement on Human Rights (A/44/971-S/21541), chap. II, para. 14 (g).

40/ Ibid., para. 15 (d).

41/ New York Agreement, I, 1.

42/ A/44/971-S/21541, chap. II, para. 15 (d).